SUPREME COURT

OCTOBER TERM, [illegible]

No. 18,732

THE STATE BOARD OF ASSESSORS OF THE
ORLEANS, THE CITY OF NEW ORLEANS
PELLADEN

vs.

THE COMPTOIR NATIONAL D'ESCOMPTE DE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
THE EASTERN DISTRICT OF LOUISIANA.

FILED NOVEMBER 21, 1888.

(18,732.)

14570

(18,732.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, *ET AL.*, APPELLANTS,

vs.

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 16, 1903.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

THE COMPTOIR NATIONALE D'ESCOMPTE DE Paris, Appellee,
versus
GEORGE B. PENROSE, Treasurer of the City of New Orleans; The Board of Assessors for the Parish of Orleans, and John Fitzpatrick, State Tax Collector for the First District of New Orleans, Appellants.
} No. 12949. In Equity.

Samuel L. Gilmore, Esquire, city attorney, and H. G. Dupre, Esquire, assistant city attorney, for George B. Penrose, city treasurer of New Orleans, E. K. Skinner, Esquire, for the Board of Assessors, Parish of Orleans, and F. C. Zacharie, Esquire, for John Fitzpatrick, State tax collector, appellants, Harry H. Hall, Esquire, for the Comptoir Nationale D'Escompte de Paris, appellee.

Appeal from the United States circuit court for the eastern district of Louisiana, New Orleans division, to the Supreme Court of the United States, returnable at the city of Washington, District of Columbia, within thirty (30) days from the sixteenth (16) day of October, A. D. 1902.

Transcript of Appeal

From the decree on exceptions of defendants to the report of the special master.

1 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
CITY OF NEW ORLEANS ET ALS.
} No. 12949.

Bill of Complaint.

Filed April 22, 1901.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in equity:

The Comptoir National D'Escompte de Paris, a corporation duly organized under the laws of the Republic of France, domiciled in the city of Paris, Republic of France, brings this, its bill of com-

plaint against The Board of Assessors for the Parish of Orleans, The City of New Orleans, a political corporation duly organized and created under the laws of the State of Louisiana, against Geo. B. Penrose, treasurer of the said city of New Orleans; and against John Fitzpatrick, State tax collector of the 1st assessment district of the city of New Orleans, all citizens of the State of Louisiana, domiciliated and residing within the jurisdiction of this honorable court.

1. And thereupon, your orator complains and says that the said Comptoir National D'Escompte de Paris, is a corporation created by and existing under the laws of the Republic of France and having its principal office for the transaction of business and its domicile in the city of Paris, and is a citizen of the said Republic of
2 France within the meaning of the laws fixing and determining the jurisdiction of this honorable court.

2. And your orator further shows that the said defendants above named are citizens of the State of Louisiana within the meaning of the laws fixing and determining the jurisdiction of this court.

3. That since 1895, complainant, after complying with all the requirements of the laws of the said State of Louisiana, established, in this city of New Orleans, an agency or office for the purpose of selling exchange and, incidentally to said exchange business and for the purposes thereof, it has advanced money upon the agricultural products of this State and other States adjacent thereto, said agricultural products being destined for shipment to foreign countries; and it has also loaned money upon said agricultural products while stored in warehouses in the city of New Orleans, in every instance, however, obtaining the money thus loaned by the sale of its exchange on New York or other cities of the United States or of foreign countries.

Your orator avers that it has no capital in the city of New Orleans and that all the money employed by it, for the purposes of its aforesaid business, is obtained by the sale of exchange on commercial centers outside of the State of Louisiana, and that the capital and credit used by it in securing the sales of said exchange is situated and exists wholly without the State of Louisiana and notably in the city of Paris, France.

Your orator avers that its aforesaid business was distinctly recognized by the legislature of the State of Louisiana which, by act No. 127 of 1898, levied upon said business a license tax of 2½ % on the gross receipts of "all moneys paid and all exchange bought and sold by it."

That complainant has paid this tax regularly to the city of New Orleans and the State of Louisiana, as well as other taxes legally levied against its property.

3 4. And your orator further shows that, in compliance with section 25 of the act of the legislature of Louisiana of 1898, p. 360, within twenty days after the list for such purpose was left at its place of business, to-wit: in January 1901, it made due and legal return, in proper form, duly sworn to, of all of its said property in the parish of Orleans and State of Louisiana and which was liable

for either municipal or State taxes and that the only money or property belonging to your orator in the said State and parish, *were:*

Office furniture	$1,000.00
Money in possession, on deposit or in hand	$20,000.00

5. Your orator further shows that notwithstanding the above true and attested statement made by it, the board of assessors for the parish of Orleans for the year 1901, made the following assessment against your orator:

"*Money loaned on interest, all credits, and all bills receivable for money loaned on interest, or advanced or for goods sold, $175,000.00.*"

6. Your orator further shows that while the assessment rolls for the parish of Orleans and the city of New Orleans, showing the above described assessment against your orator, were, under the provisions of the revenue laws of the State, being exposed, during the month of March 1901, your orator caused the same to be examined and, upon ascertaining that there appeared upon the said assessment rolls for the first municipal district and second representative district of the city of New Orleans, the above described assessment, your orator made and delivered a written application under oath, in full conformity with all the requirements of the revenue acts *acts* of the State of Louisiana to the said board of assessors, demanding that the said assessment upon "*money loaned on interest, all credits and all bills receivable for moneys loaned on interest, or advanced or for goods sold, $175,000.00,*" should be entirely cancelled by reason of the fact that all the credits and bills receivable belonging to your orator
4 were only assessable and taxable at its domicile in the city of Paris, France, where all of said credits and bills receivable were held and situated, and not in the city of New Orleans;

And your orator avers that the said board of assessors refuse to comply with said just, proper and legal demand of your orator.

7. And your orator further shows that, between the 21st. day of March and the 10th. day of April 1901, being the year in which the said illegal assessment was made, your orator addressed a written communication, in strict conformity with the provisions of the statute therefor provided, to the committee on the revision of assessments of the city council of the city of New Orleans, calling their attention to the said application previously filed with the said board of assessors and renewing the demand therein contained, and further asking that the said assessment be cancelled by reason of the fact that your orator has not and had not in the city of New Orleans any money loaned on interest, credits, etc., and your orator shows that said committee declined to hear your orator and it was deprived of the hearing provided by law and demanded by it, and that said illegal assessment was allowed to remain upon the assessment rolls of said city and State, and said committee refusing to act and cancel the said assessment, the cancellation of which was thus demanded;

And your orator avers that the above mentioned return and said

application addressed by it to the board of assessors and to the committee on the revision of assessments are in the possession of the said board of assessors, they having the same filed among the records of their office.

8. Your orator further shows that, during the year 1900 it has retained *no credits or bills receivable for moneys loaned on interest or advanced, or for goods sold*, but that whenever it has advanced money, as aforesaid, on bills of lading, warehouse receipts or otherwise, which it has taken therefor, it has not retained in
5 the city of New Orleans or the State of Louisiana any promissory note or other evidence of said credit, but that the said money has been loaned or advanced directly by the granting to the borrower thereof, a credit directly upon your orator's domicile in Paris and that it has not or has it had at any time during this year of 1901 in the State of Louisiana or the city of New Orleans any bills receivable or evidences of any such indebtedness nor has it had nor has it now in the city of New Orleans, and State of Louisiana any evidence of credits, all of the same being held at your orator's domicile in the city of Paris, France.

And your orator avers that it has not and had not in the city of New Orleans or the State of Louisiana, during the year 1901, any of the things thus assessed against it as of the value of $175,000.00, to-wit:

"*Money loaned on interest, all credits, bills receivable for money loaned on interest, or advanced or for goods sold.*"

And your orator shows that it will pay to the city of New Orleans the tax upon the one thousand dollars of furniture assessed against it, and upon the $20,000.00 of money in possession, on deposit, or in hand which it admits to be due, and that it has offered to pay or will offer to pay as soon as it may do so, the tax upon the same to the State tax collector without prejudice, that the said State tax collector has refused to accept the same or any sum less than the said entire illegal tax.

Further, your orator shows that under the Constitution laws and jurisprudence of the United States and the State of Louisiana, the power of taxation of the said State of Louisiana and the city of New Orleans, is limited to persons, property and business within the jurisdiction of the State and that no tax can be levied upon property which is not located either actually or constructively within the State seeking to levy the tax.

Your orator avers that debts are not property and that non-residents, in virtue of debts due to them, cannot be considered as
6 holders of property within the limits of the State for the purpose of taxation; that debts have their situs at the residence or domicile of the creditor and can only be taxed there and not elsewhere.

And your orator further avers that said attempted assessment and the legislation by virtue of which it is sought to be applied to said credits, are illegal, unconstitutional and void, in as much as they undertake to exercise the power of taxation on property situated

without the limits of this State or city; and that it does not lie within the power of the State or the city of New Orleans to tax property having its situs in other countries, your orator averring that jurisdiction is as essential to taxation as to the validity of a judgment and that no tax can be levied when the thing sought to be taxed is not amenable to the authority of the government which levies the tax.

Further your orator shows that said legislation and the attempted construction thereof are unconstitutional and violative of the 14th amendment of the Constitution of the United States, which says:

"Nor shall any State deny to any person within its jurisdiction the equal protection of its laws, nor deprive any person of property without due process of law."

And your orator further shows that the aforesaid treasurer of the city of New Orleans, and the said State tax collector have persisted and insisted upon the enforcement of the collection of taxes for the city of New Orleans and for the State of Louisiana, based upon the erroneous, illegal and void assessment, aforesaid, and they have demanded and will continue to demand of your orator the payment of the said city and State tax for the year 1901, levied upon the assessment aforesaid, to-wit: $4,550.00 and have threatened the seizure and advertisement of the property of your orator to pay said illegal taxes:

That your orator fears and believes that said Geo. B. Penrose, treasurer, and John Fitzpatrick, State tax collector, will exe-
7 cute the threats made, as above and will proceed with the illegal seizure and advertisement of the property belonging to your orator, and that the injury arising therefrom and inflicted thereby upon your orator would, if committed, be irreparable and irremediable; that your orator is entitled to the protection of this honorable court to prevent the threatened seizure aforesaid;

That your orator is not in any way or form indebted unto this city and State upon said illegal tax assessments.

10. Further your orator avers and so charges that, notwithstanding said return made and said written application to said board of assessors and to the committee on the revision of assessments of the city council of New Orleans, and the demands made for the cancellation of the said illegal assessments aforesaid, that the said assessors, committee and said treasurer and State tax collector combining, colluding and confederating together with the fraudulent intent of harassing, injuring and opposing your orator and depriving it of its property persisted and persists in this wrongful assessment, suffering your orator to be harassed as aforesaid and insisting upon the maintainance of said illegal and void assessment; and upon the collection of the tax for 1901, upon said assessment, all of which property so assessed is outside and beyond the jurisdiction of the said board of assessors and of the said treasurer and said State tax collector and is not located in the city of New Orleans and in the State of Louisiana;

That the acts and doings of said assessor and the said committee

on the revision of assessments, and the entering upon the rolls of said assessment and retaining them after the written protests and demands for its cancellation, are illegal and fraudulent and contrary to equity and good conscience;

That the threatened seizure and sale of the property belonging to your orator to pay and satisfy the illegal taxes levied upon said money assessments amounting to the sum of $4550.00 will occasion as your orator believes and fears, a multiplicity of suits which should be avoided and prevented.

8 That your orator is without adequate remedy at law, and that in order to prevent the spoliation and waste of the property, as aforesaid, and the expense and litigation growing out of the threatened seizure and attempted sale, aforesaid, of said property which will cause a multiplicity of suits, your orator is entitled to invoke the equitable writ of injunction forbidding and enjoining the City of New Orleans, Geo. B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector of the first district of the city of New Orleans, from seizing, advertising or attempting to *sale* any of the property, rights or credits belonging to your orator, to pay and satisfy the illegal taxes based upon the illegal assessments above referred to, to-wit:

"*Moneys loaned on interest, all credits, or bills receivable for moneys loaned on interest and advanced, or for goods sold, $175,000.00*, under the false pretense and subterfuge that your orator is liable for such taxes.

Wherefore, your orator prays:

First. That it may please your honors to grant unto your orator the most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said City of New Orleans, its officers, agents, attorneys and representatives, Geo. B. Penrose, treasurer of said city, and John Fitzpatrick, State tax collector of the first district of the city of New Orleans, enjoining, forbidding and prohibiting them, and each of them, in any way or by any proceedings whatever from enforcing the collection of the said taxes based upon the illegal assessments hereinabove complained of, and from seizing, advertising, selling or attempting to sell any property whatever belonging to your orator to pay and to satisfy any demand or claim for said illegal taxes assessed for the year 1901 against the property of your orator.

Second. That the above named assessments and municipal and State taxes thereon levied, as aforesaid, be decreed to be illegal, void and of no effect and in violation of the Constitution and

9 laws of the United States and of the State of Louisiana and that said assessments be ordered to be erased and cancelled from the assessment rolls of 1901.

Third. That your orator may have such other and further order, decree and relief in the premises as may be equitable.

Fourth. That the preliminary injunction herein to be issued be made peremptory and perpetual.

Fifth. And may it please your honors to grant unto your orator

a writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the City of New Orleans, through its mayor, Paul Capdeville, to John Fitzpatrick, State tax collector, to Geo. B. Penrose, treasurer and to the Board of Assessors for the Parish of Orleans, commanding them and each of them by a certain day and under a certain penalty to be inserted, to be and appear before this honorable court in equity, then and there to answer the premises under oath, and further to stand and abide by such order and decree therein as shall be agreed in equity and good conscience.

Sixth. And your orator further prays for costs and for all general and equitable relief, and as in duty bound, he will ever continue to pray.

COMPTOIR NATIONAL D'ESCOMPTE
DE PARIS,
(Signed) By A. BRETON, *Agent.*

(Signed) HARRY H. HALL,
Solicitor for Complainant.

A. Breton, being duly sworn, deposes and says that he is the agent and attorney in fact of the Comptoir National D'Escompte de Paris that he has read the bill of complaint in this cause and knows the contents thereof, and that all the facts therein stated, are true to the best of affiant's knowledge and belief.

(Signed) A. BRETON, *Agent.*

Sworn to and subscribed before me, this 13th, day of April, 1901.
(Signed) PURNELL M. MILNER, *Not. Pub.*

10 U. S. Circuit Court, Eastern District of La.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

In equity.

The application for an injunction *pendente lite* being submitted to the court upon the written submission of the solicitors for the defendants and in view of the argument herein heard in the equity suit between the same parties, No. 12,908 of the docket of this court and the conclusion therein reached by the court, and considering the law and the allegations of the bill of complaint which has been sworn to and not contradicted:

It is ordered that upon the complainant giving bond with good and sufficient surety, as the law requires in the sum of eight thousand dollars, an injunction *pendente lite* issue and remain in force during the pendency of these legal proceedings prohibiting and enjoining the City of New Orleans, Geo. B. Penrose, treasurer and the State tax collector of the first district of the city of New Orleans

from seizing, advertising, selling or attempting to sell any of the property, rights or credits belonging to the Comptoir National D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein.

N. O. April 27th, 1901.

(Signed) CHARLES PARLANGE, *Judge.*

11 U. S. Circuit Court, Eastern District of La.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS. } No. 12949.

In equity.

Whereas, an application has been made for an injunction *pendente lite* in the above case, wherein the bill of complaint was filed on the 22nd. of April, 1901; and whereas, the right to the issuance of said injunction was fully argued in the pleadings between the same parties, No. 12908 of the docket of this court,

Now, therefore, we the undersigned, solicitors of the city of New Orleans, board of assessors and the State tax collector, hereby submit the application herein for an injunction *pendente lite*, with the understanding that should such order be allowed, complainant will furnish a bond to be signed by the same surety in the full sum of eight thousand dollars.

(Signed) H. G. DUPRE,
Ass't City Att'y, Solicitor for the City of N. O.

(Signed) E. K. SKINNER,
Solicitor for Board of Assessors.

(Signed) F. C. ZACHARIE,
Solicitor for State Tax Collector.

12 *Bond of Injunction.*

Filed May 6, 1901.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS. } No. 12949.

(2 cancelled 10c. U. S. int. rev. documentary stamps.)

Know all men by these presents, that we The Comptoir Nationale D'Escompte de Paris as principal and The Fidelity and Deposit Company of Md. as security, are held and firmly bound unto The City of New Orleans, Geo. B. Penrose, treasurer, and tax collector of 1st dist. of N. O. in the sum of eight thousand dollars, lawful money of the United States of America, to be paid to said defendants in injunction, their heirs, executors, administrators, and assigns,

for which payments well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly, by these presents.

Sealed with our seals and dated the 4th day of May in the year of our Lord 1901.

Whereas, the said Comptoir National D'Escompte de Paris has presented a petition to the honorable the U. S. circuit court for the eastern district of Louisiana, praying for a writ of injunction.

Now the condition of the above obligation is, that we, the above bound Comptoir Nationale D'Escompte de Paris, the Fidelity and Deposit Company of Md. will well and truly pay the said City of New Orleans, Geo. B. Penrose, treasurer and the tax collector of first dist. of city of N. O., the defendants in said injunction, all such damages as they may recover against us in case it should be decided that the injunction was wrongfully obtained.

Signed, sealed and delivered in the presence of—

Attest: WARNER & BLACK,
General Agents,
By J. E. WARNER.

FIDELITY AND DEPOSIT COMPANY
OF MD.,
(Signed) By P. M. MILNER, *Local Director*.
[SEAL.]

13 *Injunction.*

Issued May 6th, 1901.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The President of the United States of America to the City of New Orleans, Greeting:

Whereas, it has been represented unto us in our said circuit court on the part of the Comptoir National D'Escompte de Paris in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said City of New Orleans, your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from seizing, advertising, selling or attempting to sell any of the property, rights or credits belonging to the Comptoir National

D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein and that you remain so inhibited and enjoined during the pendency of these legal proceedings until the further order of our said court in the premises.

Witness, the Honorable Melville W. Fuller, Chief Jus-
[SEAL.] tice of the Supreme Court of the United States, at the city of New Orleans, this 6th day of May in the year of our Lord, 1901.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

14 *Marshal's Return on Injunction.*

Filed May 6th, 1901.

Received by U. S. marshal, New Orleans, La., May 6th, 1901 And on the 6th day of May 1901 I served a copy hereof on the City of New Orleans, La., by handing the same to Paul Capdevielle, mayor of the city of New Orleans, La.

(Signed) CHAS. FONTELIEU,
U. S. Marshal,
By J. H. PATIN,
D'y U. S. Marshal.

15 *Injunction.*

Issued May 6th, 1901.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The President of the United States of America to Geo. B. Penrose, treasurer of the city of New Orleans, Greeting:

Whereas, it has been represented unto us in our said circuit court on the part of the Comptoir National D'Escompte de Paris in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Geo. B. Penrose, treasurer of the city of New Orleans, your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from seizing, advertising, selling or attempting to sell any of the property, rights or credits

belonging to the Comptoir National D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein and that you remain so inhibited and enjoined during the pendency of these legal proceedings until the further order of our said court in the premises.

Witness, the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, at the city of New Orleans, this 6th day of May, in the year of our Lord, 1901.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

16 *Marshal's Return on Injunction.*

Filed May 6th, 1901.

Received by U. S. marshal, New Orleans, May 6th, 1901 And on the 6th day of May 1901 I served copy hereof on Geo. B. Penrose, treasurer of the city of New Orleans, La. By handing the same to him in person in the city of New Orleans, La.

(Signed) CHAS. FONTELIEU,
U. S. Marshal,
By J. H. PATIN,
Deputy U. S. Marshal.

17 *Injunction.*

Issued May 6th, 1901.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The President of the United States of America to the State tax collector of the first district of the city of New Orleans, Greeting:

Whereas, it has been represented unto us in our said circuit court on the part of the Comptoir National D'Escompte de Paris in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said State tax collector of the first district of the city of New Orleans your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from seizing, advertising, selling or attempting to sell any of the property, rights or

credits belonging to the Comptoir National D'Escompte de Paris for the purpose of paying or satisfying any of the taxes the illegality of which is averred in the bill of complaint herein and that you remain so inhibited and enjoined during the pendency of these legal proceedings until the further order of our said court in the premises.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, at the city of New [SEAL.] Orleans, this 6th day of May, in the year of our Lord, 1901.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

18 *Marshal's Return on Injunction.*

Filed May 6th, 1901.

Received by U. S. marshal New Orleans, La. May 6th, 1901 And on the 6th day of May 1901 I served copy hereof on the State tax collector of the first district of New Orleans, La., at his office. By handing the same to Chas. E. Letten, a clerk of the said tax collector whom I found in charge of said office. The State tax collector of the first district of New Orleans La. being out of the city at the time, all of which I found out by interrogating the said Chas. E. Letten clerk in charge of said office in the city of New Orleans, La.

(Signed) CHAS. FONTELIEU,
U. S. Marshal,
By J. H. PATIN,
D'y U. S. Marshal.

19 *Answer.*

Filed May 16th, 1901.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS; JOHN FITZPATRICK, State Tax Collector; Geo. B. Penrose, Treasurer of the City of New Orleans, and City of New Orleans. } No. 12949.

The joint and several answer of the Board of Assessors for the Parish of Orleans, the City of New Orleans; Geo. B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector for the first district, parish of Orleans, to the bill of complaint of the Comptoir Nationale D'Escompte de Paris.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of

exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer thereto, answering say:

1st. That respondents and defendants admit the first allegation of fact in plaintiff's bill contained, namely, that said Comptoir Nationale D'Escompte de Paris is a corporation created under the laws of the Republic of France and having its principal office for the transaction of its business in the city of Paris.

20 2nd. Respondents and defendants admit the allegations contained in article 2 of complainant's bill.

3rd. Respondents and defendants especially and particularly deny all the allegations contained in complainant's third article, except in so far as to admit that said complainants are doing business in the city of New Orleans.

4th. Respondents and defendants admit the allegations contained in the fourth article of complainant's bill, in so far as it is therein alleged that said complainant made a return of what it claimed to be taxable property, but they deny all other allegations thereof.

5th. Respondents and defendants admit the allegations of fact *and* contained in the fifth article of complainant's bill of complaint to be true and correct.

6th. Respondents and defendants admit the allegations contained in the sixth article of complainant's bill in so far as it relates to the application for cancellation of the assessment therein described, and refusal to do so by the Board of Assessors, respondents and defendants herein, and these respondents and defendants deny all other allegations thereof.

7th. Respondents and defendants admit the truth of the allegations contained in the seventh article of complainant's bill in so far as it is alleged therein that application — made to the board of review for cancellation of the assessment therein described, but deny all other allegations therein contained, and especially and particularly deny that complainant was in any way deprived of any hearing provided by law, or that it was refused the same.

8th. Respondents and defendants deny all the allegations contained in the eighth article of complainant's bill, and especially deny that complainant retains no capital in the city of New Orleans, or that all of the money used in its said business in the city of New Orleans is supplied by the selling of exchange or that said money when received in the city of New Orleans

21 is remitted at once to Paris, France, but, on the contrary, these respondents and defendants aver that when money is received from and paid by the debtor in the city of New Orleans to said complainant said money is not remitted to Paris, France or elsewhere, but is retained in said city and loaned out, to other persons. Respondents and defendants further deny that said complainant has not retained in this city or State and has not therein any credits or bills receivable for money loaned on interest or advanced, or that

whenever it has advanced money during the past year or the current year on bills of lading or warehouse receipts that it has taken therefor non-negotiable obligations, and respondents and defendants especially deny if such be the case that said notes have been sent and transmitted to Paris or London where they are held by complainant, but on the contrary, respondents and defendants aver and charge that all evidences of indebtedness due by any parties to said bank growing out of business done in this city and State, however represented, remain in this city and State in the possession of said complainant and within the taxing power of the State of Louisiana and city of New Orleans; and respondents and defendants further aver and charge that even if it were the case that said notes and bills were remitted to France as alleged in complainant's bill, that said notes and bills would yet be liable to taxation in the State of Louisiana in view of the nature of these transactions, and that said taxation would not be in violation of the Constitution, laws and jurisprudence of the United States or the State of Louisiana, and respondents and defendants further aver and charge that if said business is now conducted as alleged by said complainant the same is done for the obvious purpose of escaping legal assessment and taxation and to escape the decision handed down by the supreme court of this State in the case of Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors, reported in 52 La. Ann., p. —.

9th. Respondents and defendants admit the allegations contained in the ninth article of complainant's bill in so far as it is charged therein that the State tax collector and the city of New Orleans, and the treasurer of said city, will insist upon the payment of
22 said tax of the year 1901, and would proceed to seize and advertise complainant's property to satisfy said tax if not prevented by orders of court; but, respondents and defendants especially deny that there would be any irreparable or irremediable injury to complainant inasmuch as complainant could properly, in an action at law, proceed against the aforesaid officers and city for reimbursement in case such seizure and collection should be declared illegal.

Respondents and defendants aver that complainants are fully indebted unto the city of New Orleans and State of Louisiana upon the full assessments made by said board of assessors as herein complained of, and same should be maintained by this honorable court.

10th. Respondents and defendants admit the allegation contained in the tenth article of complainants' bill in so far as it is therein alleged that the State and city officers above mentioned have declined to accede to complainants' demand for cancellation of the assessments for the year 1901, but respondents and defendants deny all other allegations therein contained, and especially deny that said property so assessed is outside and beyond the jurisdiction of the board of assessors and of said treasurer, said city and said tax collector, and further deny that said property is not located in the city of New Orleans and State of Louisiana, but, on the contrary, respondents and defendants aver that for purposes of taxation said property is within the jurisdiction of the State of Louisiana to the

assessed amount of $175,000.00 being money loaned on interest or credits or bills receivable for moneys loaned on interest or advanced, or for goods sold, and that said assessment is neither illegal nor contrary to equity and good conscience.

Respondents and defendants further deny that the threatened proceedings of the officers of the State of Louisiana and the city of New Orleans to collect such tax will occasion any multiplicity of suits to protect complainants' alleged rights in the premises, and re-
23 spondents and defendants especially deny that complainant is without adequate remedy at law, but on the contrary aver that it has ample and sufficient remedy at law and that these respondents and defendants should not be enjoined and forbidden from further proceeding in the premises, and respondents and defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, and without this that there is no other matter, cause or thing in the said bill contained for these respondents and defendants to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these respondents and defendants.

All of which matters and things these respondents and defendants are willing to aver, make and prove as this honorable court shall direct, and these respondents and defendants submit to this honorable court that all the matters and things in the said bill mentioned and complained of are matters which may be tried and determined at law and with respect to which the said complainant is not entitled to any relief in a court of equity and these respondents and defendants hope that they shall have the same benefit of this defence as if they had demurred to the said complainants' bill, and respondents and defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and respondent tax collector prays that there be awarded to the attorney of the State tax collector ten (10 %) per cent. on the aggregate amount of the tax and penalties herein involved, or so much thereof as may be decreed by this honorable court to be maintained.

Respondents and defendants further pray that the writ of injunction herein improvidently issued be dissolved with dam-
24 ages as provided by the laws of the State of Louisiana in such cases made and provided.

(Signed) H. G. DUPRE,
Ass't City Attorney,
(Signed) SAM'L L. GILMORE,
City Attorney,
Solicitors for the City of New Orleans.
(Signed) E. K. SKINNER,
Solicitor for Board of Assessors,
(Signed) F. C. ZACHARIE,
Solicitor for State Tax Collector,
Respondents and Defendants.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, the undersigned authority, on the 15th day of May, 1901 Paul Capdevielle, mayor of the city of New Orleans, Geo. B. Penrose, treasurer of the city of New Orleans, John Fitzpatrick, State tax collector, and Geo. C. Preot, president of the board of assessors, acting herein in their respective capacities, who being first duly sworn did depose and say that they have read the above and foregoing answer to the bill of complaint of the Comptoir Nationale D'Escompte de Paris, and that the facts and allegations therein contained are true to the best of their knowledge and belief.

(Signed) PAUL CAPDEVIELLE, *Mayor.*
(Signed) GEO. B. PENROSE, *Treasurer.*
(Signed) GEO. C. PREOT,
Pres'd't Board of Assessors.
(Signed) JOHN FITZPATRICK,
Tax Collector, 1st District, Orleans Parish.

Sworn to and subscribed before me, notary this 15 day of May, 1901.

[SEAL.] (Signed) BERNARD C. SHIELDS,
Not. Pub.

25 *Replication.*

Filed May 30, 1901.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

The replication of The Comptoir National D'Escompte de Paris, complainant, to the answer of the defendants, The Board of Assessors, John Fitzpatrick, State tax collector; The City of New Orleans, and George B. Penrose, treasurer of the city of New Orleans.

This replicant saving and reserving unto itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold issufficiencies of the said answers, for replication thereunto says that it will aver maintain and prove its said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied to by this replicant without that, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied,

is true, all of which matters and things this replicant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

Jan. 23rd. 1901.

(Signed) HARRY H. HALL,
Complainant's Solicitor.

26 *Argeement to Appoint Special Examiner.*

Filed Nov. 13th, 1901.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET AL. } No. 12949.

By agreement of counsel for respective parties, it is hereby ordered that R. H. Carter be and he hereby is appointed to act as special examiner of this court to take orally, such testimony as the parties hereto desire to be taken in this city and to report the same to this court, with all convenient speed, said testimony when so taken, to be used on the trial of this cause.

N. O. May — 1901.

We, the undersigned hereby consent to the appointment of R. H. Carter, special examiner.

(Signed) HARRY H. HALL,
Sol. for Compl't.

(Signed) E. K. SKINNER,
Att'y Board of Assessors.

(Signed) H. G. DUPRE,
Ass't City Att'y.

(Signed) F. C. ZACHARIE,
Solicitor for Tax Collector.

27 *Note of Evidence.*

Filed January 13, 1902.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS,
vs.
BOARD OF ASSESSORS. } No. 12949.

Counsel for complainant offers, produces and files in evidence the testimony of Albert Breton taken under commission and herein filed on July 2nd, 1901, and his testimony taken by consent before R. H. Carter, special examiner on the 21st of November, 1901.

It is admitted that the complainant is a corporation organized under the laws of France, and is a citizen of that Republic, domiciled in Paris, France.

N. O. Jan. 5th. 1902.

28 Deposition of Albert Breton, of Paris, France, taken on the 25 September, 1901, for complainant in case of Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors *et als.*, No. 12949, U. S. circuit court, eastern district of Louisiana, before John K. Gowdy, U. S. consul general at Paris, France, at the U. S. consulate, 36 Avenue de l'Opera, Paris, France, under a commission issued out of the clerk's office of the U. S. circuit court, eastern dist. of La., at New Orleans, La., on July 9, 1901, in the above entitled and numbered cause, and returned and filed October 7th, 1901.

Harry H. Hall, solicitor for complainants.
Sam'l L. Gilmore, city attorney, and H. G. Dupre, ass't city att'y, solicitors for City of New Orleans and Geo. B. Penrose, treasurer of city of New Orleans.
E. K. Skinner, solicitor for Board of Assessors.
F. C. Zacharie, solicitor for State Tax Collector.

Int'y # 1. What is your name, occupation and present place of residence?
To the first interrogatory he saith as follows.
My name is Albert Breton; I am a banking employee, and I reside at Colombes, Seine, France.
Int'y # 2. What official connection have you had with the Comptoir National D'Escompte de Paris?
To the second interrogatory he saith as follows:
I was the local agent of their agency in New Orleans, La.
Int'y # 3. If in reply to interrogatory No. 2 you say that you have been the local agent of said comptoir in the city of New Orleans and therein represented it, please state how long you have been thus its represen-ative?
To the third interrogatory he saith as follows:
I was there from the year 1895 until April, 1901.
Int'y # 4. What has been the character and nature of the business done by the Comptoir National in New Orleans, during your said connection therewith.
To the fourth interrogatory he saith as follows:
29 The business was that of a general foreign exchange business, carrying the advancing of money on products of the State of Louisiana and other Southern States, such products being destined for shipment to foreign countries or to be stored in the different warehouses of the State of Louisiana.
Int'y # 5. If in reply to interrogatory No. 4 you say that it has done a business of selling exchange in the city of New Orleans, and for the purposes thereof, has advanced money upon the agricultural products of the State and other States adjacent thereto, such products being destined for shipment to foreign countries and that it has also loaned money on said agricultural products and other property while stored in warehouses in the city of New Orleans, state

whence you as agent of said Comptoir National obtained the money thus advanced and thus loaned?

To the fifth interrogatory he saith as follows:

The money was obtained by drawing foreign exchange on Europe.

Int'y #6. What capital, during the time aforesaid, had and up to the present time, has the Comptoir National in the city of New Orleans?

To the sixth interrogatory he saith as follows:

There has never been a fixed capital, but we had on an average twenty thousand ($20,000) dollars deposited in the local banks.

Int'y #7. If in answer to interrogatory No. 6 you say that said Comptoir National had and has no capital or a limited capital in the city of New Orleans, please state fully where its capital, if any, is located.

To the seventh interrogatory he saith as follows:

All the capital of the Comptoir National is located in Paris, France, where the head office of the company is situated.

Int'y #8. Are you familiar with the provisions of act 127 of the *the* General Assembly of Louisiana of 1898, which levies a license tax of 2½ % on the gross receipts of all moneys paid and all exchange bought and sold?

To the eight interrogatory he saith as follows:

Yes.

30 Int'y #9. If you reply that you are familiar with the said act of the legislature, please state fully of what your knowledge of said act consists.

To the ninth interrogatory he saith as follows:

In the year 1898 there was introduced in the Louisiana legislature an act levying a prohibitive licence tax on the business the Comptoir National was doing in New Orleans. I therefore decided to appear before the ways and means committee of the legislature in Baton Rouge and show the inconvenience of such an act by the legislature. After a few hearings and consultations with the auditor of the State, now His Excellency Governor W. Heard, and Doctor Peter Trezavant of Shreveport, who was then chairman of the ways and means committee, the ways and means committee adopted at my own suggestion the act No. 127 of 1898, which was passed by the legislature. It was then understood, as Doctor Trezevant testified before the civil district court of Louisiana, that this act 127, of 1898, would include all taxes to be paid by the agency in New Orleans.

Int'y 10. Has complainant or not, paid any taxes under said act 127 of 1898? If so, what was the amount of said taxes and when were they paid?

To the tenth interrogatory he saith as follows:

Yes, we paid the taxes due, according to such act in the years 1899, 1900, and 1901. I cannot remember exactly the amounts paid but the aggregate sum for each year has ranged from two thousand five hundred dollar*d* ($2,500.00) to three thousand five hundred dollars ($3,500.00).

Int'y 11. What steps, if any, did you take looking to the cancellation from the assessment rolls of the city and parish of Orleans, of the following assessments levied against the Comptoir National for the year 1901.

"Moneys loaned on interest, all credits and bills receivable for moneys loaned on interest or advanced or for goods sold, $175.000,00"?

To the eleventh interrogatory he saith as follows:

I took the legal steps to say that I made an application for abatement tending to the cancellation of the assessment before the board of assessors of the city of New Orleans, but my application was not granted.

31 Int'y # 12. During the years 1900 and 1901 state what credits, or bills receivable for moneys loaned on interest or advanced, or for goods sold, the Comptoir National had or retained in the city of New Orleans or State of Louisiana? State fully whether or not it received for moneys loaned or advanced, any promissory notes, or bills receivable, during said years.

To the twelfth interrogatory he saith as follows:

We did not receive promissory notes or bills receivable because our clients preferred and insisted to be simply overdrawn, so as to be able to reimburse us the whole or part of our advances at their convenience at any date they might choose.

Int'y # 13. If in reply to interrogatory No. 12, you state that the agency of the Comptoir National in the city of New Orleans, did not during the years 1900 and 1901 take any bills receivable or promissory notes for moneys loaned or advanced by it on bills of lading, goods in warehouses or otherwise, state fully what acknowledgement or evidence of said indebtedness was taken by said Comptoir National D'Escompte de Paris through you as its agent in the city of New Orleans or through any one else representing it?

To the thirteenth interrogatory he saith as follows:

Our clients used to draw cheques on the Comptoir National giving at the same time sufficient collateral to cover their drawings. There was no — representing the Comptoir National in 1900 or 1901 but myself in New Orleans, and therefore all business was done through me.

Int'y # 14. What is the business of the Comptoir National, and what has been the business during the existence of its agency in the city of New Orleans.

To the fourteenth interrogatory he saith as follows:

The business is and always has been that of a general foreign exchange business.

Int'y 15. If in reply to interrogatory No. 14 you state that its business has been the sale of exchange, what has been the purpose and object of its loaning money or advancing money on

32 warehouse receipts, bills of lading or other securities?

To the fifteenth interrogatory he saith as follows:

The object was to pay in advance the amount of foreign exchange bought by us, as drafts and bills of lading relating to same could not be delivered before the shipment of the goods to Europe, the

object was also to comply with the request of the local merchants who wanted to facilitate and develop the handling through New Orleans of products bought in the interior of the Southern States. Another object was also the employment of funds arising from exchange on Europe sold in advance at high rates in view of remitting the same funds back to Europe at lower rates.

Int'y # 16. What advantages, if any, has the Comptoir National D'Escompte de Paris, in dealing in exchange, and what profit does it make in the interest received by it on loans, over and above the amount of interest which it pays to banks or other financial agencies?

To the sixteenth interrogatory he saith as follows:

The profits from foreign exchange form the difference between the nett rate of selling and the nett rate at which we can rebuy to cover such sales. The foreign exchange business is — very erratic one as far as the profits are concerned, but I may state that the difference between the selling and purchasing prices ranges from fifty cents (50c.) to one dollar and a half $1.50 per thousand dollars ($1,000.00). As far as profit on interest is concerned it depends entirely on the rates of interest ruling in Europe and the United States. Sometimes the rates of interest in the United States has been up to four per cent. (4%) above the European rate, but sometimes it has also happened that money was cheaper in the States than in Europe. In the latter case the loss of interest is compensated by the profit in a foreign exchange deal. In the above statement I have not taken into consideration the exceptional rates ruling occasionally in the New York stock market.

Int'y # 17. Please state further any facts within your knowledge tending to prove or proving that there are no credits or bills receivable for moneys loaned on interest or advanced or for goods
33 sold or moneys loaned on interest in the city of New Orleans and the State of Louisiana belonging to the Comptoir National de Escompte de Paris and that there have been none such during the years 1900 and 1901.

To the seventeenth and last direct interrogatory he saith as follows:

As already stated our clients keep simply overdrawn accounts and we give them the facility to make the re-imbursement total or partial, at their own convenience and whenever they please. As far as the credits are concerned, our credits are issued and drawn on Paris and London and are to be re-imbursed in these places at their respective due dates.

Cross-examination:

Cross int'y # 1. If in reply to direct int'y No. 2 you state that you were the agent of the plaintiff company in the city of New Orleans during the years 1897 to 1901, inclusive, please state, in detail the character of business transacted by your company in the city of New Orleans and the State of Louisiana during those years, and give in detail the methods pursued by you in these transactions. State fully every step of the negotiations between your company and any indi-

vidual seeking and receiving a loan therefrom, from the time of the application for such a loan up to the time of its repayment, and annex to your answers hereto copies of any blank forms used by your company in such connection?

To the first cross interrogatory he saith as follows:

The character of the business transacted by the agency of the Comptoir National in New Orleans, is that stated in act 127, of 1898, of the Louisiana legislature, the dealing in foreign exchange carrying the advance of money as already stated in my previous answers When a client needs money he draws a cheque on and hands us at the same time sufficient security to cover the amount drawn. The money thus obtained by him may be re-imbursed at any time either with foreign exchange or by cash. To get the money ad-
34 vanced we draw on Paris, London or Berlin as the case may be. When the money is re-imbursed we remit it back to Europe through a foreign exchange transaction. When a client wants to use a credit for a fixed period of time we open for his account a credit to be utilized by drawing on Paris or London and the amounts drawn against such credits are to be remitted to Paris or London before the maturity of the drafts accepted by our correspondents. I have here no copies of blanks at my disposal.

Cross int'y #2. If you state in your answers that you require of a borrower that he should give you as an evidence of his indebtedness a negotiable or non-negotiable note, please describe such note in full, state what becomes of it from the time that it is given to your agent in New Orleans up to the time of the close of the entire transaction? If in reply to the above interrogatory you state that such negotiable or non-negotiable note is sent outside of the State of Louisiana at any time during such transaction, please state if it is ever returned to this State, by whom, through whom, and to whom.

To the second cross interrogatory he saith as follows:

As already stated, a client draws cheques on us which are kept by the accountant as cash vouchers. When we use foreign credit, drafts are issued on our foreign correspondents and such drafts are sold to the New York banks and remitted by these banks to their agents in Europe. These drafts never come back to America.

Cross int'y #3. If in reply to any of the above cross interrogatories you have stated that you require collateral security for any loans that you make, please state what becomes of such collateral during the time for which the loan is made, and if you state that such collateral is sent state where it is sent, by whom it is sent, to whom it is sent, and please state further, if the same is ever returned, and if so by whom and to whom?

To the third cross interrogatory he saith as follows:

The collateral referred to is kept in trust in New Orleans by the accountant both for the account of the client and the Comptoir National. As there is frequent necessity of handling and ex-
35 changing the documents composing the collateral it is quite impossible to send it out of the State of Louisiana.

Cross int'y #4. If in reply to your first interrogatory you have

stated that you were the representative of the plaintiff company in this city and State during the years 1897 to 1901, inclusive please state wherein the conduct of your business during the years 1900 and 1901 differs from the conduct of your business for previous years? If you state that the business differs, among other respects, in the fact that non-negotiable notes given you by borrowers were, during the years 1900 and 1901, sent outside of the State of Louisiana, will you please state whether this change in the method of your business was made as a result of the decision of the case of the Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors by the supreme court of Louisiana, and reported in 52 Ann., page 1319 etc., wherein an assessment similar to the one complained of in the present suit was maintained? Please state what your deposits in the State of Louisiana aggregated in each of the years 1900 and 1901 and what were the cash balances on hand by your company at the end of each month? Please state the amount of your loans in this city and State during each of those years?

To the fourth cross interrogatory he saith as follows:

There was a change in the conduct of our business in 1900 and 1901 as mentioned in the cross interrogatory, but the reason of that change was due to the complaints we received from our clients who wanted us to do as other local institutions were doing, that is to say to allow them to be simply over-drawn instead of requiring notes to be signed by them. The average of our cash balances with the local banks during 1900 and 1901 reached an aggregate amount of twenty thousand dollars ($20.000.00) more or less. I cannot remember and therefore I cannot state fully how much money we had each month in the New Orleans banks most of our advances are against foreign exchange dealings, and they last as a rule between five and thirty days. There is a continual renewal of such dealings and advances, which taken together during the year will give
36 rather a large amount, which however cannot be considered as a fixed loan. It is quite impossible for me to say and I cannot make an exact statement here in Paris of the total amount of our advances during the years 1900 and 1901.

Cross-int'y ≠5. Please state where you obtain the money with which to carry on the business conducted by you in this city and State and what becomes of the sums collected by you from time to time, upon repayment of loans previously made by you.

To the fifth and last cross interrogatory he saith as follows:

The money needed by the agency of the Comptoir National in New Orleans comes from foreign exchange, drawn on London, Paris Berlin, &c. wherever the rates are most advantageous, and all money collected in New Orleans is remitted in the same way to Europe in a re-imbursement of each previous drawing.

(Signed) ALBERT BRETON.
A. BRETON.

(Signed) JOHN K. GOWDY,
Commissioner.

Examination of the above witness, reduced to writing by George E. Light, a disinterested person, and by the witness subscribed and sworn to in my presence this twenty six- day of September, A. D. 1901.

(Signed) JOHN K. GOWDY,
[SEAL.] *U. S. Consul General, Paris, Commissioner.*

37 *Testimony of Albert Breton for Complainant.*

Filed January 13, 1902.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
THE BOARD OF ASSESSORS ET ALS. } No. 12949.

Testimony taken in the above numbered and entitled cause on behalf of complainants, on the 21st day of November, 1901, at the office of H. H. Hall, Esq., New Orleans, La., before R. H. Carter, Esq., special examiner herein.

Appearances.

Harry H. Hall, Esq., solicitor for complainant.
F. C. Zacharie, Esq., representing respondents.
H. G. Dupre, Esq., " "
E. K. Skinner, Esq., " "
S. L. Gilmore, Esq., " "

38 The solicitor for the complainant, upon objection having been urged by the solicitor for respondents that Mr. Albert Breton who had testified in Paris under commission is at present in the city of New Orleans and should be orally examined, states that he has requested Mr. Breton to appear before the examiner in the case, and in the presence of counsel, to give them an opportunity of such further cross examination as they may see fit to propound.

ALBERT BRETON, after having been duly sworn, was examined on behalf of complainant, and testified as follows:

Direct examination

By Mr. HALL:

Q. Mr. Breton, are you the gentleman formerly the agent of the Comptoir Nationale D'Escompte de Paris, New Orleans, who testified in this case in Paris under commission, which I now show you?
A. Yes sir.
Q. Are you still the agent of, or have you any connection with the Comptoir Nationale D'Escompte de Paris?
A. No sir.
Q. When did you sever that connection?
A. In August, 1901.

Q. Have you returned to New Orleans, permanently or is your visit here temporarily.
A. Temporary.
Q. You answered interrogatories and cross-interrogatories under this commission.
A. Yes sir.
Q. Those answers are true and correct?
A. Yes sir.

Offer.—Counsel for complainant offers the commission in evidence and tenders the witness to counsel for respondents for examination

Cross-examination.

By Mr. ZACHARIE:

39 Q. I understood you to say, Mr. Breton, that you severed your connection with the Comptoir National D'Escompte de Paris, last August?
A. Yes sir.
Q. Do you know of your own knowledge, how the business is carried on at present?
A. I have not seen any business since the day I left here.
Q. When did you leave here?
A. In May, last May.
Q. Then you don't know of your own knowledge, how that business has been carried on since you left here last May.
A. No sir.
Q. Do you know how much was to the profit of the interest account of this company last year?
A. No sir, I would have to look at the books.
Q. Could you state about?
A. No sir. If you will allow me I will give you the reason, because the interest account and the exchange are mixed up.
(Mr. HALL: Not kept separate.)
A. They are kept separate but if you want to make a statement you have to go into detail.

Mr. ZACHARIE:

Q. Well, state, if you can, about what proportion of the business was profits on the interest account and what proportion of profits on the exchange account, I do not ask you to state exactly.
A. I am under oath, I can't answer that just by——
Q. I do not ask you to state exactly; I say whether you can state about?
A. There is no proportion to establish, because it depends sometimes how the exchange varies in your favor or not. You may make a transaction, combined transaction both on exchange and interest, sometimes interest might give you 80 per cent. and 20 per cent. in exchange, and sometimes you might get 95 per cent. on exchange and 5 per cent. on interest, sometimes you have a profit on

exchange and a loss on interest. That is what we call the arbitrage business.

Q. In answer to the fourth interrogatory, under this commission, you say that the business was that of a general foreign ex-
40 change business carrying the advance of money on products of the State of Louisiana and other Southern States, such products being destined for shipment to foreign countries or to be stored in different warehouses of the State of Louisiana. Do you mean to say that all of your dealings were on goods or bills of exchange on goods destined to be shipped to foreign countries?

A. Yes sir.

Q. Or did you not lend money on agricultural products of Louisiana stored in different warehouses of the State of Louisiana which were not to be shipped abroad?

A. Well, yes, I lent money on agricultural products, some of them I could not know if they were shipped or not, but the bulk of the business done was against products which were to be shipped away from the State of Louisiana.

Q. Can you state how large a portion of your business was done in exchange on such products to be shipped from Louisiana, how large a proportion and what proportion of the business was upon agricultural products of Louisiana not to be shipped from Louisiana.

A. It will be about 80 per cent. on one side and 20 per cent. on the other side.

Q. 80 per cent., on which side?

A. On agricultural products destined to be shipped from Louisiana.

Q. And about 20 per cent.——

A. On products which I could not know whether they were shipped or not.

Q. Did you not, or didn't this Comptoir National D'Escompte de Paris lend or advance money on warehouse receipts?

A. Yes sir.

Q. Did it not lend or advance money on State bonds, United States bonds or city bonds.

A. Occasionally on city bonds, and State bonds and premium bonds.

Q. When in answer to the fifth interrogatory you say the money was obtained by drawing foreign exchange on Europe, you mean to say that the cash which you lent in the city of New Orleans was obtained by drawing this foreign exchange on Europe and getting it cashed here in the banks.

41 A. Getting it in New York.

Q. And the cash was forwarded to you from New York?

A. Yes sir.

Q. And that was the money that you lent?

A. Yes sir.

Q. Do you know, or can you state approximately, the amount of loans that you made during the year 1900?

A. No, I cannot.

Q. About.

A. Well, I made so many loans you know only for a short period, and I can't state the total amount, it would be too far away, the exact amount.

Q. Was it over a million dollars?

A. Taken it altogether, yes.

Q. How much over a million?

A. I do not know.

Q. Was it ever two millions?

A. No sir.

Q. As I understand you, a great many of these loans were for short periods, so that you turned the money over and over again during the year?

A. Yes sir.

Q. You state in answer to the sixth interrogatory, that there never has been a fixed capital, but we had on an average twenty thousand dollars deposited in the local banks. Do you mean to say by that, that during the whole year of 1900, you had altogether during that year, not more than twenty thousand dollars deposited in the local banks?

A. As an average, yes sir.

Q. You say in answer to the seventh interrogatory, that all the capital of the Comptoir National D'Escompte de Paris, is located in Paris, France where the head office of the company is situated. I suppose that you mean by that, that that is the general headquarters where the business is carried on and as you need capital here to carry on the business you would draw on that capital in Paris?

A. No sir.

Q. By bills of exchange?

A. No sir, the capital of the Comptoir National D'Escompte de Paris stays in Paris all the time, anything we draw comes
42 from the surplus deposits they have on the other side.

Q. The surplus deposits?

A. To carry that business in France.

Q. Yes, then to cash these bills of exchange you do not draw from the capital but from the surplus deposits?

A. And from the credits open in our favor by other banks too.

Q. In your answer to the ninth interrogatory you say, that His Excellency Governor Heard and Doctor Peter Trezevant of Shreveport who was then chairman of the ways and means committee adopted at my (that is you-) suggestion, the act 127 of the Acts of '98 which was passed by the legislature, it was then understood as Doctor Trezavant testified before the civil district court of Louisiana, that this act 127 of the Acts of '98 would include all taxes to be paid by the agency in New Orleans. What suit, if any, did Doctor Trezanant testify in?

A. He testified in a suit brought by the State of Louisiana against the Comptoir National D'Escompte de Paris.

Q. For what?

A. For the five years' license claimed, $42.000. It was after the passage of that bill, right after.

Q. That testimony was taken down in writing?

A. Yes sir, to the best of my belief.

Q. Was that the cancellation of the assessment of a tax, or was it a license suit?

A. It was a license suit.

Q. You say in answer to the eleventh interrogatory, that "I took legal steps to see that I made application for abatement tending to the cancellation of the assessment before the board of assessors of the city of New Orleans, but my application was not granted. Did you make any application to the commit-ee of review of the city council?

A. Yes sir.

Q. In reply to the *tewlfth* interrogatory you state in sub-
43 stance, that you did not take any promissory notes or bills receivable because your clients preferred and insisted on being overdrawn so as to be able to reimburse in whole or in part the advances at their convenience at any other day they might choose. What sort of evidence of indebtedness did you take?

A. Well, they drew a check.

Q. They drew a check on you?

A. Yes sir.

Q. You had no due bill?

A. No sir.

Q. This was in the ordinary form of check, pay to the order of so and so?

A. Yes sir.

Q. And you simply retained that check when you cashed it?

A. Yes sir.

Q. Less your discount?

A. We got no discount we paid the check in full.

Q. Now in reply to the thirteenth interrogatory, you say "giving at the same time sufficient collateral to cover their drawings." What form did the taking of that collateral assume?

A. They gave us bills of lading warehouse receipts or railroad bills of lading or steamship bills of lading, warehouse receipts.

Q. Did you give a receipt for them?

A. No sir.

Q. They simply manually delivered——

A. Yes sir.

Q. —these bills of lading or warehouse receipts. There was no written understanding by which you could proceed on them to forfeit them?

A. Yes sir, there is a general letter of hypothecation which they gave.

Q. Which was in the nature of a pledge, was it not?

At the request of the solicitors for respondents, counsel for com-plai-ants states that he will furnish a copy of that mandate of hypothecation.

A. I want to state that that letter, that general letter of hypothecation does not apply to loans, simply loans, it applies to any other kind of business that we may transact, either loans — exchange credits, everything, you will see it yourself when you read it.

Q. It is in the nature of a pledge?

A. No sir.

44 Q. In reply to the fourth interrogatory, you say the business is and always has been that of a general foreign exchange business. I suppose you mean by that, that in all your transactions here you got your money here to invest, by drawing exchange?

A. No, I mean to say that every transaction made begins by foreign exchange transaction and ends by foreign exchange transaction that the thing is settled by drawing and by exchange.

Q. Just explain what you mean by settled.

A. When I draw exchange I have in view to make a profit by any way I can. Sometimes I will draw and buy right away, I mean to say in a very short period, and I make a profit on exchange. Sometimes I sell exchange and I buy for forward delivery against it and I have to calculate at what rate of interest I can employ the funds coming from such sale of exchange. If the rate of interest is larger than the loss in exchange, I will lose in the transaction. Sometimes in exchange the difference between the price of sale and the price of purchase is large enough to allow me to borrow money on the other side at a higher rate, even than I can get here. That was the case four years ago when the interest showed $700 profit.

Q. The sum and substance, I understand, of the exchange business is that whatever money you loaned out in whatever form it might be the money was raised by exchange?

A. Yes sir.

Q. You state in answer to the first cross-interrogatory, somewhat the same as you already state in this cross interrogatory, but you said I have here no copies of blanks at my disposal—I believe that refers to the character of the drafts?

A. Yes sir.

Q. Could you supply them?

A. Yes sir.

Q. Well please do so.

A. All right. I wish to state—you asked me a while ago when Col. Zacharie mentioned the suit brought by the State for five years' back license, you asked me Colonel Zacharie, asked me if

45 it was a suit for abatement of assessment; of course I said no, but I want to state that we had never been assessed in that way as we are now up to that date. There was no case for abatement of assessment because we had not been assessed in that way up to that date.

By Mr. DUPRE:

Q. Have you been the agent of the complainant in this suit up—from the inception of the business?

A. Yes sir.

Q. Up to last August?

A. Up to last April.

Q. Was the business conducted during the year 1900 by the Comptoir National D'Escompte de Paris, in this city, the same business that had been transacted right along by that company; the nature of the business is the same?

A. Yes sir.

Admission.—It is admitted by counsel that the character and method of conducting the business has not been changed since April last when Mr. Breton left the office.

Q. Wherein does the method of conducting the business during the year 1900, differ from the method you conducted that business, in the year- '97 and '98, if any?

A. It is only up until 1900 we took—some clients gave us promissory notes.

Q. When did you cease taking those promissory notes?

A. In 1900.

Q. The first of the year 1900?

A. Yes sir.

Q. As long as you were taking those notes, Mr. Breton, you never sent them outside of the State of Louisiana, did you?

A. Very seldom, sometimes but very seldom.

Q. You retained those notes in this city?

A. Yes sir.

Q. Did you testify in the case of The Comptoir National D'Escompte de Paris, *vs.* The Board of Assessors, in the civil district court for this parish?

A. Yes sir.

Q. Reported in the 52nd Annual?

A. Yes sir, I know before Judge St. Paul.

46 Q. You stated in your testimony there, that in the conduct of your business you used two forms of blanks, one which reads as follows — promise to pay to Comptoir National D'Escompte de Paris — for value received with interest at the rate of — per cent. per annum until paid. This note is not negotiable and is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment—or should the drawer hereof when called on—refuse or fail to keep the margin hereon good, the Comptoir National D'Escompte de Paris is authorized to sell the said securities at public or private sale, without recourse to legal proceedings, applying the proceeds of sale towards payment of within note. C. 2." Is that blank in use by your company?

A. No sir.

Q. Why was it discontinued?

A. It was discontinued because all the local banks used to allow their clients to overdraw like they do now, and the clients objected to having to sign notes.

Q. When was that discontinued, when was the use of that form discontinued?

A. I cannot state the exact date. The first of 1900.

Q. You testified to the use in your business of the following blank: "No. — New Orleans —— 189– Received from the agent of the Comptior National D'Escompte de Paris — dollars — on account of — exchange on — arising from shipment and from measures taken preparatory to the shipment of — per — for — which is covered by policies of insurance against fire and marine risks and which policies are hereby bound and pledged specifically to — for the fulfillment of the contract to furnish the exchange agreed to and for the money here advanced in case of the non-completion of the contract from any cause." Is that blank in use in your business?

A. No sir.

Q. Was it in use during the year 1900?

A. No sir.

Q. Was this change in your business made in pursuance to the decision of the——

47 A. No sir. As I told you before, it was on account of the demand made by clients asking to do what all the local institutions did.

Q. Do you mean to say that other local institutions do not take promissory notes?

A. They take them but not in the kind of foreign exchange business we do, they do not take them as a rule most of the clients are overdrawers.

Q. Did you charge interest on your overdrafts?

A. Yes sir.

Q. Well, what evidence of indebtedness besides the account on your books with your customers, have you, that these people owe you anything at all?

A. We have a regular settlement which we make every month.

Q. When you put $50.000 we will say, to the credit of one of your customers, on your books, does he give you any receipt for your money previous to your crediting him with that on your books?

A. I do not credit him, I pay him.

Q. You pay him——

A. Yes sir I pay him the money.

Q. What evidence have you that he owes you anything?

A. I have got a check from him, he is overdrawn on my books.

Q. For the amount you have loaned him?

A. Yes sir.

By Mr. ZACHARIE:

Q. Suppose a man comes to you and says, Here, I have got certain securities, certain warehouse receipts or bills of lading, I want to borrow $50.000, you say to him We will let you have it. Now he

deposits with you these bills of lading or these warehouse receipts or these bonds or whatever you choose to accept as security for the loan. Do you*b* give him a receipt for those?

A. No. I am going to explain the business. Well, a client comes to me and says to me, and says I want $50.000, and I propose to give you such collateral, bills of lading for cotton or for grain or warehouse receipts or bonded warehouse receipts for cotton or for cake or cotton seed meal, any kind of those products. *It* I approve, ready to do the business, I say Yes; well, there are two ways
48 of letting him — that money, very often I open a credit in his favor on the Comptoir National D'Escompte de Paris in Paris or in London, then he draws against that credit, I mean to say he sells his draft on the comptoir to anybody he please, either in New Orleans or New York, if the loan is for a short period instead of asking him to draw I will draw it myself and hand him the money.

Q. You sell your own exchange?

A. Then he *in* overdrawn on my books and to show that he is overdrawn I tell him you draw a check on me and he gives me that check. And then I make him sign a general letter of hypothecation (which will be shown to the attorney) Outside of that we have nothing of importance, I don't see anything else.

Q. These securities and checks remain in your office here in New Orleans?

A. Yes sir, the checks are cash vouchers for the cashier who has them to show that he paid the money.

Q. Suppose that the amount drawn by him does not come up to the amount of the value of this hypothecation, this hypothecated stuff, what is done there, at the close of the transaction?

A. The general letter of hypothecation does not state any amount It states simply it is a power of attorney.

Q. I say what is done when the transaction is concluded. He has got all of the money that you agreed to give him and the collaterals in your hands are worth more than that What do you do there?

A. We have a margin. You mean to say if the collateral is worth more than the money we give him?

Q. Yes?

A. Then we have a margin; then we are protected if there is a fall in the price of the securities he gives us.

By Mr. DUPRE:

Q. Does he take back the check he has given?

A. No sir.

Q. When the transaction is concluded what becomes of that check that he has drawn against your bank?

A. The check is a cash voucher, it stays among the cash vouchers of the day on which it is paid and remains perpetually in the
49 custody of the Comptoir National D'Escompte de Paris, for the cashier to show that he has paid that check.

Q. In other words it is not returned to the man when he pays his debt?

A. Because we keep an account current which varies each day.

Q. The agent of the Comptoir National D'Escompte de Paris in New Orleans has full authority to act for the Comptoir National D'Escompte de Paris in this city?

A. Yes, sir.

Q. He does not have to confer by cable or other-wise with his principals in Paris or France as to whether he will make one loan or another, a particular loan?

A. He has authority to loan certain amounts or make certain transactions by exchange according to the instructions he has from the other side.

Q. I mean, if I went in there he would not have to cable to ask about me?

A. No, sir.

By Mr. ZACHARIE:

Q. In other words you have general instructions in regard to the manner——

A. We have a power of attorney.

Q. And do not need to consult them about any particular contract which you make?

A. No, sir.

Re-direct examination.

By Mr. HALL:

Q. Won't you repeat what you have just stated as a reason why your customers wanted to give drafts upon the amount which you agree to loan them, by checks rather than promissory notes?

A. It is because they by drawing checks on us then they keep a sort of account current constantly overdrawn and they pay back any day they please the whole or part of the money they loan from the Comptoir National D'Escompte de Paris.

Q. And how about interest?

A. And in that way they are only charged interest on their daily overdrafts.

50 Q. Whereas if they give a note for the entire amount?

A. Whereas if they give a note for the entire amount, they need not, first, when they first call on us——

Q. Whereas if they give a note for the entire amount they pay interest upon the entire amount as evidenced by the note?

A. Yes sir.

By Mr. DUPRE:

Q. What is the aggregate amount of the daily overdrafts of your customers during the year 1900, in other words what did you lend them practically?

A. It vary so much I can't make it accurate. In summer——

Q. I don't say what was the average, what was the aggregate amount?

A. I can't tell exactly. I will ask you to see the books for that.

Agreement.—It is agreed between counsel that the testimony taken at this sitting shall be used on the trial of the case of The Comptoir National D'Escompte de Paris *vs.* The Board of Assessors No. 12.908 now also pending in the United States circuit court for this district.

51 *Note of Evidence in Behalf of Defendants.*

Fuled Jan'y 13/1902.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS ET ALS. } No. 12949.

The defendants introduce in evidence the following:

(1) The testimony of J. H. Fulton & Gilbert H. Green, taken on December, 6, 1901. before R. H. Carter, special examiner on behalf of defendants, marked Exhibit "A."

(2) Documents marked Exhibits "B" "C" "D" "E" & F, being blank forms used by complainants in the conduct of their business.

(3) Document marked Exhibit "G" being blank form used by Commercial national bank of this city in conduct of business similar to that of complainants.

52 EXHIBIT "A."

Filed January 13th, 1902.

Testimony of J. H. Fulton and G. H. Green for Defendants.

United States Circuit Court. Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* CITY OF NEW ORLEANS ET ALS. } No. 12949.

Testimony taken in the above numbered and entitled cause on behalf of defendant- on the 6th day of December, 1901, before R. H. Carter, Esq., special examiner herein, at the office of H. H. Hall, Esq., in the city of New Orleans.

Appearances.

H. G. Dupre, Esq., F. C. Zacharie, and E. K. Skinner, Esq., representing defendants.

Harry H. Hall, Esq., representing complainant.

J. H. FULTON, witness sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By Mr. DUPRE:

Q. Mr. Fulton, you are the president of the Commercial national bank?

A. I am the manager.

Q. *Are you familiar with the business of foreign exchange as conducted in the city of New Orleans?*

53 A. Yes sir; that is one of the branches of our bank.

Q. Will you please state how that business is conducted in your department when loans are made by your department on foreign exchange.

A. How it is conducted?

Q. Yes? What evidence is taken of the indebtedness?

A. We take a receipt for the money.

Q. Have you a blank form of that receipt?

A. No sir.

Q. I mean at your bank, not with you?

A. Yes sir.

Q. Will you kindly supply a blank form of receipt?

A. Yes sir.

Q. Do you require that when you loan money and collateral is given you that any other evidence of indebtedness shall be given you in the way of a note?

A. Not against exchange loans, exchange advances.

Q. Are these receipts surrendered by you when the transaction is closed?

A. Usually.

Q. Is that the method of doing that particular line of business in the city of New Orleans, to your knowledge?

A. I don't know anything about the methods of other banks, that is our method.

Q. I mean other banks?

A. I don't know anything at all about their methods.

By Mr. ZACHARIE:

Q. Mr. Breton was on the stand the other day as a witness here in the Comptoir National D'Escompte de Paris case and he stated that his manner of doing business in regard to bills of exchange was adopted from the manner of doing that business by the banks. He states "If a client comes to me and says to me, he says I want $50,000 and proposes to give you such collateral, bills of lading for cotton or for grain or warehouse receipts or bonded ware-

54 house receipts for cotton or for cake or cotton seed meal, any kind of those products; if I approve I am ready to do business, I say Yes; well there are two ways of letting him have that

money. Very often I open a credit in his favor on the Comptoir National D'Escompte de Paris in Paris or in London, then he draws against that credit, I mean to say he sells his draft on the comptoir to anybody he pleases either in New Orleans or New York; if the loan is for a short period instead of asking him to draw I will draw it myself and I hand him the money." "You sell your own exchange?" Answer. "Then he is overdrawn on my books and to show that he is overdrawn I tell him you draw on me and he gives me that check simply and then I make him sign a general letter of hypothecation (which will be shown to the attorney) Outside of that we have nothing of importance, I don't see anything else." Now, is that the manner in which you do business?

A. Yes sir, we do business in that way with some of our customers.

Q. Do you, or not, in addition to what he says here, take receipts to show the amount of money he has received?

A. When the credit is given by an overdraft, no receipt is taken.

Q. What evidence then, have you, of the indebtedness?

A. Merely his checks on our bank.

Q. That is the sole evidence of the loan?

A. Yes sir.

Q. How much of the business is done in that way, out of the volume of business of the day?

A. That I cannot answer.

Q. State approximately?

A. How much is done in that way in New Orleans?

Q. No, in your bank, the amount of your business, what proportion is done?

A. I could not answer that from memory at all.

No cross examination.

GILBERT H. GREEN, witness sworn and examined on behalf of defendants, testified as follows:—

55 Direct examination.

By Mr. DUPRE:

Q. Are you connected with any banking institution in the city of New Orleans?

A. I am manager of foreign exchange in the Whitney national bank.

Q. You have heard this extract read from the testimony of Mr. Albert Breton taking at a previous hearing of this case?

A. Yes sir.

Q. Will you state whether the method of doing business by your bank is similar to that stated by him?

A. You mean in connection with foreign exchange business?

Q. Yes, only?

A. For all advances on exchange we invariably take a receipt as

an evidence of indebtedness, they attach the collaterals to this receipt, for advances against exchange, which shows the exact amount we advance against them.

Q. You have no other evidence of indebtedness?

A. No sir, this receipt takes the place of it.

Q. Do you know what is the custom in the other banks in the city of New Orleans?

A. As far as I know they follow the same rule we do.

Q. Were you formerly connected with any other foreign exchange department in this city?

A. Yes sir. I was four years manager of the foreign exchange department of V. & A. Meyer, I organized that business myself, and I had that rule, I was then for three years the manager of the foreign exchange department at Julius Weis and Son, and there we had exactly the same rule, I invari-bly took a receipt for the amount of money advanced on the exchange, with the collaterals attached to it, bills of lading attached to it.

No cross examination.

56 *Documents Marked Exhibits "B," "C," "D," "E," and "F," Being Blank Forms Used by Complainants in the Conduct of Their Business.*

Offered by Defendants and Filed January 13th, 1902.

"EXHIBIT B."

No..... NEW ORLEANS, ..., 190

Comptoir National d'Escompte de Paris,

Pay to.....or order

.....dollars.

$..... .....

[Printed across the face:] Original

No..... NEW ORLEANS, ..., 190

Comptoir National d'Escompte de Paris,

Pay to..... .....or order

.....dollars.

$..... .....

[Printed across the face:] Duplicate

57 "EXHIBIT C."

Comptoir National d'Escompte de Paris.

Capital, francs 150,000,000.

Cable address: Comptonia New Orleans.

NEW ORLEANS, ...

Credit No.....

We hereby authorize.....
.....
to draw on the Comptoir National d'Escompte de Paris in.....
at.....for account of..... .....
for the cost of..... .....
to be shipped.....
to the extent of.....
.....
each bill to be covered by all shipping documents, say consular invoice and full set of bills of lading filled up to the order of .....
.....insurance against marine risk to be effected in.....
The consular invoice and one bill of lading to be sent direct to
.....

And we hereby agree with the drawers, endorsers and *bona fide* holders of bills drawn in compliance with the terms of this credit that the same shall be duly honored on presentation to the Comptoir National d'Escompte de Paris in..... .....if drawn and negotiated at any time within.....
from this date, such bills to be accompanied by an abstract of invoice and all the bills of lading issued except the one sent direct to
.....

All drafts to be signed as being drawn against credit No.....
dated, New Orleans,.....and to be advised in original and duplicate to the Comptoir National d'Escompte de Paris in.....

____ ____,

For the Comptoir National d'Escompte de Paris,
New Orleans Agency.

58 "EXHIBIT D."

Comptoir National d'Escompte de Paris.

Capital, francs 150,000,000.

Adresse telegraphique, Comptonia New Orleans.

NEW ORLEANS, ..., 190

.....

Credit No. .....

D'ordre et pour compte de .....
nous ouvrons aupres de vous un credit documentaire.....
en faveur de.....
jusqu'a concurrence de..... .....
contre remise des documents d'usage afferents a une expedition
a .....
de .....
L'assurance maritime sera soignee a..... .....

Nous vous prions d'informer les beneficiaires de l'ouverture du present credit que nous emettons valable jusqu'au.....
et dont vous vous rembourserez par notre debit.....

Veuillez bien nous adresser directement les documents et agreez nos salutations empressees.

——— ———,
Le Directeur.

58½ *Translation of Exhibit "D."*

Comptoir National d'Escompte de Paris.

Capital, francs 150,000,000.

Cable address: Comptonia New Orleans.

NEW ORLEANS, ..., 190

.....

Credit No. .....

By order and for account of.....
we open with your good selves a documentary credit.....
in favor of..... .....
up to amount of.... .....
against delivery of ordinary shipping documents of .....
of .....
insurance policy to be effected in .....

Please advise beneficiaries of above credit in their favor which we issue available until.....
and to be reimbursed by our debit with .....

Please send us direct documents, yours truly,

——— ———, *Agent.*

59 "EXHIBIT E."

Know all men by these presents, that the undersigned, in consideration of financial accommodations given, or to be given or continued to the undersigned, by the Comptoir National d'Escompte de Paris, Paris, hereafter called "The Comptoir," hereby agree with the said Comptoir, that whenever the undersigned shall become or remain, directly or contingently, indebted to the said Comptoir for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any endorsement, check, draft, guarantee, or in any manner whatsoever, or upon any claim, the said Comptoir shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise against the undersigned, or his or their executors, administrators or assigns, namely:

1. Said Comptoir or their agents or assigns, shall at all times have the right to require from the undersigned that there shall be lodged with said Comptoir or with their agents or assigns, as security for all existing liabilities of the undersigned to said Comptoir approved collateral securities to an amount satisfactory to said Comptoir, and upon the failure of the undersigned, at all times, to keep a margin of securities with said Comptoir for such liabilities of the undersigned, satisfactory to said Comptoir, then all liabilities of the undersigned to said Comptoir shall, at the option of said Comptoir become immediately due and payable, notwithstanding any credit or time allowed to the undersigned, by any instrument evidencing any of the said liabilities.

2. All securities deposited by the undersigned, with said Comptoir or with their agents or assigns, as collateral to any such overdraft or indebtedness of the undersigned to said Comptoir shall be held by said Comptoir as security for any other liability of the undersigned to said Comptoir, whether then existing or thereafter contracted; and said Comptoir shall also have a lien upon all property of the undersigned of every description left with the said Comptoir in any way, as security for any liability of the undersigned to said Comptoir now existing or hereafter contracted.

3. Upon the failure of the undersigned, either to reimburse any overdraft as soon as requested to do so by said Comptoir or their agents or assigns, or to pay any indebtedness to said Comptoir when becoming or made due, or to keep up the margin of collateral securities above provided for, then and in either event said Comptoir may immediately, without advertisement and without notice to the undersigned, sell any of the securities held by them as against any or all of the liabilities of the undersigned, at private sale or broker's board, or otherwise, and apply the proceeds of such sale as far as needed toward the payment of any or all such liabilities, together with interest and expenses of sale, holding the undersigned responsible for any deficiency remaining unpaid after such application.

It is further agreed that these presents constitute a continuing agreement applying to any and all future, as well as to existing transactions between the undersigned and said Comptoir.

.....

Dated ..... the ..... day of ..... 190..

60 "EXHIBIT F."

Know all men by these presents, that the undersigned, in consideration of the fact that they may sell to the Comptoir National d'Escompte de Paris, or their agents, from time to time, bills of exchange, drawn in, but payable out, of the United States, against shipments of merchandise from various ports in the United States to various ports abroad against bills of lading to be delivered therewith, and for other valuable considerations, hereby agree with the Comptoir National d'Escompte de Paris, and with their agents and the successors of either or both, that said Comptoir National d'Escompte de Paris in addition to all rights created by the circumstances shall have the following rights, and that the undersigned will do and perform each and all the following matters and things:

All bills of lading delivered to the Comptoir National d'Escompte de Paris or to their agents, shall be held by them as security for the acceptance and /or payment as the case may be, at their discretion, of any and all bills of exchange purchased by the Comptoir National d'Escompte de Paris or their agents, and the said Comptoir National d'Escompte de Paris shall have a lien upon all property covered by or described in said bills of lading as security for the acceptance and /or payment of each and all of said bills of exchange.

Whenever the Comptoir National d'Escompte de Paris or their agents shall have purchased such bills of exchange from the undersigned, all bills of lading applicable thereto shall be lodged with the Comptoir National d'Escompte de Paris as collateral security for acceptance and /or payment of the said bills of exchange as aforesaid.

If at any time in the discretion either of the Comptoir National d'Escompte de Paris, or their correspondents, it shall be deemed advisable, for the purpose of securing the acceptance and /or payment of aforesaid bills of exchange, either to surrender the bills of lading against broker's engagements, or to place the merchandise represented by said bills of lading in the hands of their brokers for sale at their discretion, they shall be at liberty to do so, and to charge all expenses, including commissions for sale and guaranty, and apply the proceeds in or towards the payment of the bills of exchange for account of whom it may concern.

In case the proceeds arising from the sale of the merchandise represented by the said bills of lading or any of them, shall at any time be less than the amount of the bills of exchange purchased by said Comptoir National d'Escompte de Paris or their agents, and

drawn against said merchandise, and the costs, expenses and commissions of said sale, legal charges and all other disbursements, the undersigned will after such sale, forthwith pay the amount of any such deficiency to Comptoir National d'Escompte de Paris or their agents, United States gold coin of the present standard of weight and fineness, or its equivalent.

If any of the documents aforesaid be surrendered against payment before maturity of any of the bills drawn against them, a rebate shall be allowed to the drawee, at the rate of one half of one per cent. per annum above the then advertised rate for short deposits of the leading joint stock banks in London or at the official bank rate in Paris or at the customary rate for such rebate in other European cities.

It is further agreed that these presents constitute a continuing agreement applying to all future, as well as to existing transactions, between the undersigned and the Comptoir National d'Escompte de Paris and their agents and correspondents elsewhere.

.....

Dated ..... the ..... day of ..... 189..

61 *Document Marked Exhibit "G," Being Blank Form Used by Commercial National Bank of the City of New Orleans in Conduct of Business, etc.*

Offered by Defendants and Filed January 13, 1902.

No. ..... NEW ORLEANS, ..., 190–.

Received from the Commercial National Bank, of New Orleans, ... dollars, on account of ..... exchange on ..... arising from shipment, and from measures taken preparatory to the shipment of ..... per ..... which is covered by policies of insurance against fire and marine risks, and which policies are hereby bound and pledged specially to ..... for the fulfillment of the contract to furnish the exchange agreed to, and for the money here advanced, in case of the non-completion of the contract from any cause.

$..... .....

62 *Order of Reference to W. W. Howe, Special Master.*

Entered in the Minutes and Filed January 13/1902.

Circuit Court of the United States, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS. } No. 12949.

In equity.

This cause come on this day to be heard upon the pleadings and proofs.

Present, Harry H. Hall, Esq. for the complainant; H. G. Dupre, ass't city attorney, for the treasurer of the city of New Orleans; E. K. Skinner, Esq., for the board of assessors for the parish of Orleans; and F. C. Zacharie, Esq., for the tax collector of the 1st district of New Orleans, and was partially heard by the court.

Whereupon the court of its own motion, ordered that said cause be referred to W. W. Howe, Esquire, as special master, with full power to examine the same, hear evidence and testimony and with directions to report upon all the facts and law in the case and to speed the cause.

(Signed) CHARLES PARLANGE,
U. S. Judge.

New Orleans, January 13th 1902.

63 *Report of Special Master.*

Filed February 14th, 1902.

United States Circuit Court, Eastern District of Louisiana, at New Orleans.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS. } No. 12949. In Equity.

To the judges of the circuit court:

By a decretal order entered in this cause January 13, 1902, it appears that the case came on to be heard upon the pleadings and proofs, and was partially heard by the court, whereupon, the court, of its own motion, ordered that said cause be referred to the undersigned, as special master, giving full power to examine the same, hear evidence and testimony, and with directions to report upon all the facts and law in the case, and to speed the cause.

In pursuance of this order, the undersigned, as special master, has been attended by counsel for the complainant and for the de-

fendants, and has examined the evidence taken in the cause, as submitted by counsel, and has considered the facts and the law, and begs leave to report as follows:

The Facts.

The following facts appear, either by the admissions of the answer or by the proofs in the cause:

The complainant is a corporation created by and existing under the laws of the Republic of France and having its principal office for the transaction of business, and its domicile, in the city of Paris, France.

Since the year 1895, it has had an agency or office in the
64 city of New Orleans for the purpose of selling exchange; and has advanced money upon the agricultural products of this part of the country; such agricultural products being either on their way to foreign countries or stored in warehouse in New Orleans; and the money thus advanced was obtained by drawing foreign exchange on Europe. There has never been any fixed capital of the complainant in Louisiana, but under the operations of the agent in New Orleans, it has had on an average $20,000 deposited in the local banks of this city.

The complainant has paid a license tax to the State of Louisiana and the city of New Orleans, as demanded, under act 127 of 1898, being an annual tax on business done in New Orleans, the amount of which annual tax ranges from $2500 to $3500.

It has also paid regularly or offered to pay an annual tax upon its average money in bank or capital used in New Orleans, on an assessment of $20,000, as well as upon its office furniture.

The assessment complained of in the case at the bar is different from and in addition to the foregoing. It is made under a heading of "Money loaned on interest, all credits, and all bills receivable for money loaned on interest or advanced for goods sold, $175,000." The contention of the complainant is that this assessment should be entirely cancelled by reason of the fact that all the credits and bills receivable belonging to the complainant were only assessable and taxable at its domicile in the city of Paris, France, where all of its credits and bills receivable were held and situated and not in the city of New Orleans.

(Bill of complaint, par. 6.)

In order to come down to the exact question of fact in dispute, it may be stated that the proofs show the following state of things:

The testimony of Albert Breton was taken partly by commission and partly by personal examination of the witness in New Orleans. It appears that he was the local agent of the complainant at the time inquired of; that the business of the complainant was as above stated; and that the money used in such business was ob-
65 tained by drawing foreign exchange on Europe; that the complainant has never had any fixed capital in Louisiana,

but had an average deposit in the local banks of $20,000, which presumably was used and turned over in the business here, and the tax on which is not in dispute, having been paid, or agreed to be paid, as above stated; that the license tax upon the business of the company has been duly paid for the years 1899, 1900, and 1901, in amounts ranging for each year from $2500 to $3500; and that legal steps had been taken tending to the cancellation of the assessment complained of in this cause, and the application of the complainant was not granted. As for the business involved in this suit and constituting the $175,000 of disputed assessment, the witness states as follows:

"Q. During the years 1900 and 1901, state what credits or bills receivable for money loaned on interest or advanced, or for goods sold, the Comptoir National had or retained in the city of New Orleans or the State of Louisiana. State fully whether or not it received for monies loaned or advanced any promissory notes or bills receivable during said years."

"A. We did not receive promissory notes or bills receivable, because our clients preferred and insisted to be simply overdrawn, so as to be able to reimburse us the whole or part of our advances at their convenience at any date they might choose."

"Q. If in reply to interrogatory No. 12 (the foregoing), you state that the agency of the Comptoir National in the city of New Orleans did not during the years 1900 and 1901 take any bills receivable or promissory notes for money loaned or advanced by it on bills of lading, goods in warehouse, or otherwise, state fully what acknowledgement or evidence of said indebtedness was taken by said Comptoir National D'Escompte de Paris, through you, as its agent in the city of New Orleans, or through anyone else representing it?"

"A. Our clients used to draw checks on the Comptoir National, giving at the same time sufficient collateral to cover their
66 drawings. There was no one representing the Comptoir National in 1900 or 1901 but myself in New Orleans, and therefore, all business was done through me."

The witness further states that "the business is, and always has been, that of a general foreign exchange business:" "the object was to pay in advance the amount of foreign exchange bought by us, as drafts and bills of lading relating to same can not be delivered before the shipment of the goods to Europe; the object was also to comply with the request of the local merchants who wanted to facilitate and develop the handling through New Orleans of products brought in the interior of the Southern States. Another object was also the employment of funds arising from exchange on Europe sold in advance at high rates in view of remitting the same funds back to Europe at lower rates."

The witness further states, in answer to the 16th interrogatory under the commission: "The profits from foreign exchange form the difference between the net rate of selling and the net rate at which we can rebuy to cover such sales. The foreign exchange business is a very erratic one as far as profits are concerned, but I

may state that the difference between the selling and purchasing prices ranges from fifty cents (50c.) to one dollar and a half ($1.50) per thousand dollars ($1,000.00). As far as profit or interest is concerned, it depends entirely on the rates of interest ruling in Europe and the United States. Sometimes the rate of interest in the United States has been up to four per cent. (4%) above the European rate, but sometimes it has also happened that money was cheaper in the States than in Europe. In the latter case, the loss of interest is compensated by the profit in a foreign exchange deal. In the above statement, I have not taken into consideration the exceptional rates ruling occasionally in the New York stock market."

In answer to the seventeenth and last direct interrogatory of the commission, he says as follows: "As already stated, our clients keep simply overdrawn accounts, and we give them the facility to
67 make the reimbursement, total or partial, at their own convenience and whenever they please. As far as the credits are concerned, our credits are issued and drawn on Paris and London and are to be reimbursed in those places at their respective due dates.

In answer to the first cross-interrogatory, he states as follows: "The character of the business transacted by the agency of the Comptoir National in New Orleans is that stated in act 127 of 1898 of the Louisiana legislature: The dealing in foreign exchange carrying the advance of money, as already stated in my previous answers. When a client needs money, he draws a cheque on and hands us at the same time sufficient security to cover the amount drawn. The money thus obtained by him may be reimbursed at any time, either with foreign exchange or by cash. To get the money advanced, we draw on Paris, London or Berlin, as the case may be. When the money is reimbursed, we remit it back to Europe through a foreign exchange transaction. When a client wants to use a credit for a fixed period of time, we open for his account a credit to be utilized by drawing on Paris or London, and the amounts drawn against such credits are to be remitted to Paris or London before the maturity of the drafts accepted by our correspondents. I have here no copies of blanks at my disposal."

To the second cross-interrogatory, he states as follows: "As already stated, a client draws cheques on us which are kept by the accountant as cash vouchers. When they use foreign credit, drafts are issued on our foreign correspondents and such drafts are sold to the New York banks and remitted by these banks to their agents in Europe. These drafts never come back to America."

To the third cross-interrogatory, he states as follows: "The collateral referred to is kept in trust in New Orleans by the accountant both for the account of the client and the Comptoir National. As there is frequent necessity of handling and exchanging the documents composing the collateral, it is quite impossible to send it out of the State of Louisiana."

68 To the fourth cross-interrogatory, he states as follows: "There was a change in the conduct of our business in 1900

and 1901, as mentioned in the cross-interrogatory, but the reason of that change was due to the complaints we received from clients, who wanted us to do as other local institutions were doing: that is to say, to allow them to be simply over-drawn instead of requiring notes to be signed by them. The average of our cash balances with the local banks during 1900 and 1901 reaches an aggregate amount of twenty thousand dollars ($20,000.00) more or less. I cannot remember, and therefore, I cannot state fully how much money we had each month in the New Orleans banks. Most of our advances are against foreign exchange dealings, and they last as a rule between five and thirty days. There is a continual renewal of such dealings and advances, which taken together during the year will give rather a large amount, which however cannot be considered as a fixed loan. It is quite impossible for me to say, and I cannot make an exact statement here in Paris of the total amount of our advances during the years 1900 and 1901."

To the fifth and last cross-interrogatory, he states as follows: "The money needed by the agency of the Comptoir National in New Orleans comes from foreign exchange, drawn on London, Paris, Berlin &c. wherever the rates are the most advantageous, and all money collected in New Orleans is remitted in the same way to Europe in a reimbursement of each previous drawing."

On the return of the witness Breton to New Orleans, he was further cross-examined as to the details of complainant's business, but it does not seem that anything was elicited that could especially modify the foregoing. It was admitted by counsel that at the time this testimony was taken, the character and method of conducting the business had not been changed since April, 1901, when Breton left the office.

Testimony was taken by the defendants of two witnesses connected with New Orleans banks doing an exchange business.

69 Their practice, when carrying on a business similar to that of the complainant, is to take a receipt for the money advanced, and not a note. What the practice is of other banks or agencies does not appear.

To sum up the facts: It is found that the complainant has paid its annual license tax on its exchange business, as provided by law, and has paid, or offered to pay, its annual tax on the average amount of $20,000 of money on deposit in Louisiana; and that the assessment, complained of, of $175,000 for the year 1901, is on the credits accruing to it from the advances made by it in New Orleans, through its agents here, on bills of lading and similar documents by way of collateral. These credits were either in the form of credits on Paris or London, giving the right to the Louisiana debtors to draw on the complainant in Paris or London, or they were transactions at short time by which the debtors were overdrawn on the books. In both cases, they amounted to overdrafts secured by collateral. In the previous year, which is not now in question, the complainant took non-negotiable notes to represent these credits, and these were considered in the case in the 52 Annual which will be

hereafter referred to again; but in the instant case, for the year 1901, the question is of these overdrafts.

The Law.

In the opinion of the undersigned, the law of this case may be summarized as follows:

The protection of the Government may be either to the rights of persons or to rights in property, and taxes may consequently be imposed when either person or property is within the jurisdiction. But a personal tax can not be assessed against a non-resident, nor can the property of a non-resident be taxed unless it has an
70 actual situs within the State, so as to be under the protection of its laws. The mere right of a foreign creditor to receive from his debtor within the State the payment of his demand, can not be subjected to taxation within the State. It is a right that is personal to the creditor where he resides, and the residence or place of business of his debtor is immaterial. The power of taxation is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, their property and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. Corporations may be taxed like natural persons on their property or business; but debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor can not be taxed because he is not within the jurisdiction, and the debts can not be taxed in the debtors' hands, because they are not the property of the debtors in any sense. They are the obligations of the debtors, and only possess value in the hands of the creditors. With them, they are property, but to call them property in the hands of the debtors is simply to misuse terms.

Cooley on Taxation, pp. 14–16; State tax on foreign-held bonds, 15 Wallace, 300, 319.

The foregoing general considerations are sometimes pressed by the rule *mobilia sequuntur personam;* and although this rule is, in a certain sense, a fiction of law, yet it is none the less a rule that may be usefully observed and considered in determining the questions at issue.

The chief point to be determined is the situs of the property which has been assessed in this case in the sum of $175,000, and the main question is, what was the *situs* of that property at the time of the assessment? Was it in Paris or in New Orleans? Was it tangible personal property which had its physical situs in Louisiana, or was it of that intangible character that would cause it, in view of the above doctrines, to have its situs in France?

71 In the case of Meyer against The Sheriff, 41 An., 645, 646, the tax collector contended that under the revenue act of Louisiana, movable property should be assessed in the parish where it is located. The supreme court of Louisiana declared that this

provision applies to tangible movables, but not to incorporeal rights generally, which follow the person of the owner and are not susceptible of physical location, and added, "It is well settled that the situs of a debt as property is at the domicile of the creditor." In that case, the movable sought to be assessed in the parish of Union was a judgment in the district court of that parish in favor of V. & A. Meyer & Co, residents of New Orleans.

In the case of the Barber Asphalt Paving Co. *v.* City of New Orleans, 41 An., 1015, it was declared that "debts and other incorporeal rights, when treated as property for the purpose of taxation, can be assessed only at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. The principle applies to corporations as well as to natural persons. Hence, debts due to a foreign corporation by residents of this State can not be taxed in this State."

The decision in that case seems to have been very broad. It is contended by the city attorney that by the article 236 of the constitution of 1879, it was provided that no foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the State upon whom process may be served; and that the Barber Asphalt Co., having complied with this provision, had assumed the duties and obligations of a citizen of the State akin to those of a natural person; but the court declared that those provisions and facts did not affect the question, and that the domicile of the Asphalt Co. was still foreign in its character, being the State where it was incorporated, and that it was at that domicile that its obligations for, and its liability to, taxation for debts or other incorporeal rights which it owns must be tested and settled; citing R. R. Co. *v.* Koontz, 104 U. S., p. 11.

72 In the case of Liverpool &c. Ins Co. *v.* Board of Assessors, 44 An. 760, the question concerned two assessments, one on money in actual possession in New Orleans, and the other on what, as a matter of fact, consisted of *credits for premiums due from various insured persons.* As to the former object of taxation, the assessment was maintained on the ground that the $10,000 of money in possession of the insurance company in New Orleans was property within the State and subject to taxation, being visible and tangible and expressly made taxable by statute and taxable where actually situated, in the city of New Orleans; but as to the latter subject of assessment, namely, the premiums due, the court declared that a debt to a non-resident of a State is not liable to be taxed by a State in which he does not reside; that such credits are not within the State's jurisdiction, and that they are of no value to the debtor. The court conceded that the statute No. 106 of 1890, under which these credits were assessed, did by its language authorize the taxation of credits held by non-residents; but the court further declared that this statute must be applied in so far as it relates to tangible movables belonging to non-residents, and as to them, the general rule recognized by the comity of States, *mobilia personam sequi-tur* must

yield. But as to the movables that were intangible, like the credits in question in that cause, "the want of jurisdiction and power would render it useless to maintain the general rule applying to tangible movables." And so the court declared that such credits or debts can not be assessed against non-residents.

In the case of Railey *v.* Board of Assessors, 44 An. 765, the same question came up in regard to an assessment on credits of non-resident insurance companies, and the court finally declared, p. 770, as follows:

"These credits consist of nothing but debts due the companies for uncollected premiums. The simple question presented to us was, whether the State possessed jurisdictional power to tax such mere debts due to foreign creditors.

"There is no doubt of the legislative power to modify the
73 rule of comity, *mobilia personam sequuntur*, in many respects. Movables having an actual situs in the State may be taxed there, though the owner be domiciled elsewhere. Even debts may assume such *concrete form* in the evidences thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities, and possibly of negotiable promissory notes, bills of exchange, or bonds. But as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any *situs* distinct from the domicile of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned. As said by the Supreme Court of the United States: 'To call debts property of the debtor is simply to misuse terms. All the property there can be in the nature of things, in debts, belongs to the creditors to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due.' State tax on foreign-held bonds, 15 Wall., 300. A State has no more power to subject such debts due to foreign creditors to taxation than it would have to tax their corporeal movables situated at their foreign domicile."

In Clason against The City, 46, An. p. 1, the plaintiff was a commercial firm domiciled in Manchester, England, with an office in New Orleans. Its business in Louisiana was confined to making through a clerk or agent stationed in New Orleans, purchase of cotton for shipment to the house in Europe. The agent of the firm raised money to buy and pay for the cotton through exchange, drawing on the house in Manchester, getting money for the bills so drawn and depositing it in New Orleans banks. In delivering the opinion of the court, the chief justice said,—"The question submitted to us is, whether these amounts standing in bank to the credit of the plaintiffs are subject to taxation."

The lower court held that they were not.

After discussing the question with references to some of the
74 decisions above cited, the court said that the fact that the plaintiffs had had a resident clerk in New Orleans, and an office there, and paid a license there, was unimportant. For the

purpose of a determination of the issue involved, the court would deal with the plaintiffs as non-residents, and in so dealing with them, was of opinion that the judgment of the lower court was correct; that no distinction could be made between the debt due to the plaintiffs by a bank, as arising from a deposit to the credit of the firm in money, and that due to it from any other cause; that the relations between the plaintiffs and defendant (meaning the bank) were those of creditor and debtor; that the monies were not specially deposited to be identically restored, but went into the mass of the bank's money with the understanding that they might be used and should be the basis of items in a debit and credit account; and the judgment of the lower court was, therefore, affirmed.

In the case of The State *ex rel.* Ins. Co. *v.* Board of Assessors, 47 An. 1544, the relator was a local insurance company of Louisiana, having an office in New Orleans and owning certain Georgia State bonds, which, however, were deposited with the treasurer of Georgia. The insurance company was contending that these bonds could not be taxed in the city of New Orleans, the domicile of the company, but the court held that it had never been decided that tangible personal property could not be assessed at the owner's domicile, notwithstanding its actual situs was abroad in some other State or country; and it was, therefore, decided that such bonds might be assessed and taxed in New Orleans.

In the case of The Liverpool &c. Ins. Co. *v.* Board of Assessors 51 An. 1028, the insurance company had been assessed upon debts or credits that were due from premiums. The lower court had decided such an assessment to be invalid. The supreme court, in affirming the judgment, said,—"We understand that the issues now relate to the assessment of debts that were due for premiums, and that the other items of property assessed do not give rise
75 to any question for our decision."

The court then reviewed the authorities at considerable length and affirmed the judgment, holding that the credits due to a foreign corporation were not taxable. It seems to have been urged that the following decisions of the Supreme Court of the United States had modified the rule, namely, Home Silver Mining Co. *v.* New York, 143 U. S. 315; Adams Express Co. *v.* Ohio, 165 U. S. 228; Henderson &c. *v.* Ky., 166 U. S. 150; but the supreme court of Louisiana held, on the contrary, that such decisions rather sustained its views.

Other decisions may be referred to in which certain assessments have been sustained by the supreme court of Louisiana. In Bluefields Banana Co. *v.* Assessors, 49 An. 43, it was held that under the circumstances of that case, the cash derived in New Orleans from the sales made by the company here and deposited in bank might be assessed.

In Parker *v.* Strauss & Co., 49 An. 1173, the defendants, being a foreign firm, claimed exemption from taxation upon certain deposits in bank in New Orleans derived from negotiation of bills of exchange. The cases of Liverpool &c. Ins. Co., *v.* Board of Assessors

44 An. 760, and Clason & Co. *v.* New Orleans, 46 An. 1, were referred to. The court recognized the exemption from taxation in New Orleans of debts due foreign corporations, but declared that the decisions recognized the validity of assessment on cash of such companies necessary to be kept here for business purposes. The case of the banana Co., quoted above was recognized and applied. The court said, "The revenue act, in entire accordance with the conceded extent of the taxing power, taxes the movable property of the foreigner. We can not hold that cash thus liable to taxation is exempted because, for convenience, it is deposited in bank and checked on by the owner. It would be a strain to apply to the deposited cash the exemption from taxation accorded to debts in their ordinary significance, due to the foreign creditor." The validity of the assessment was, therefore, maintained.

76 In New Orleans *v.* Stempel, 175 U. S. 309, the circuit court of the United States for the eastern district of Louisiana had denied the validity of the assessment on "money in possession on deposit or in hand, money loaned on interest, all credits and all bills receivable, for money loaned or advanced, or for goods sold; and all credits of any and every description." The assessment had been made under the act of 1890, No. 106, which declared that "all rights, credits, bonds, and securities of all kinds, promissory notes, open accounts, and other obligations, and all cash" should be subject to taxation. The seventh section of the act, page 124, after declaring "that it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation," closes with this provision:

"And this shall apply with equal force to any person or persons, representing in this State business interests, that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations, or credits arising from the business domiciled in this State, are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative."

The Supreme Court of the United States in its decision reviewed the following cases: The Liverpool &c. Ins. Co. *v.* Board of Assessors, 44 An. 760, referring back to 41 An. 645 and 1015; Railey *v.* Board of Assessors, 44 An. 765; Clason *v.* New Orleans, 46 An. 1; Banana Co. *v.* Assessors, 49 An. 43; Parker *v.* Strauss, 49 An. 1173; Liverpool &c. Ins. Co. *v.* Board of Assessors, 51 An. 1028. The court notes the qualification recognized in the cases of the Banana Co. and Strauss & Co., and at page 316, declared as follows, with reference to the specific assessments complained of by the appellee, Stempel.

"From this review of the decisions of the supreme court of the State, it is obvious that monies, such as those referred to,
77 collected as interest and principal of notes, mortgages and other securities kept within the State and deposited in one of the banks of the State for the use or reinvestment, are taxable under

the act of 1890. They are property arising from business done in the State; they were tangible property when received by the agent of the plaintiffs, and as such subject to taxation, and their taxability was not, as the court holds, lost by their mere deposit in a bank. It is true that when deposited, the monies became the property of the bank, and for most purposes the relation of debtor and creditor arose between the bank and the depositor; yet as evidently the monies were to be kept in the State for reinvestment or other use, they remained still subject to taxation, according to the decision in 49 La. Ann. 43. With regard to the notes and mortgages, it may be conceded that there is no express decision of the Supreme Court to the effect that they were taxable under the law of 1890, yet the reasoning of that court in several cases, and its declarations, although perhaps only dicta, show that clearly in its judgment they had a local situs within the State, and were by the statute of 1890 subject to taxation.

"When the question is whether property is exempt from taxation, and that exemption depends alone on a true construction of a statute of the State, the Federal courts should be slow to declare an exemption in advance of any decision by the courts of the State. The rule in such a case is that the Federal courts follow the construction placed upon the statute by the State courts, and in advance of such construction they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact. In other words, they should not release any property within the State from its liability to State taxation unless it is obvious that the statutes of the State warrant such exemption, or unless the mandates of the Federal Constitution compel it.

"If we look to the decisions of other States, we find the frequent ruling that when an indebtedness has taken a concrete form
78 and become evidenced by note, bill, mortgage or other written instrument, and that written instrument evidencing the indebtedness is left within the State in the hands of an agent of the non-resident owner, to be by him used for the purposes of collection and deposit or re-investment within the State, its taxable situs is in the State. See Catlin *v.* Hull, 21 Vt. 152."

In Bristol *v.* Washington County, 177 U. S., p. 133, the Supreme Court of the United States held that personal property of a citizen of and resident in one State, invested in bonds and mortgages of another State, is subject to taxation in the latter State.

In Union, etc., Co. *v.* Lynch, 177 U. S., p. 149, it was held that cars of the Union Refrigerator Trans. Co, a corporation of Kentucky, engaged in furnishing to shippers refrigerator cars for the transportation of perishable freight and which were employed in the State of Utah for that purpose, were subject to taxation by that State. The court cited the following decisions:

American, etc., Co. *v.* Hall, 174 U. S., 70; Pullman Co. *v.* Pennsylvania, 131 U. S., 530; Adams Express Co. *v.* Ohio, 165 U. S., 194; and Adams Express Co. *v.* Ohio, 166 U. S., 185; and quoted from the first of these cases the following language:

It having been settled, as we have seen, that where a corporation of one State brings into another to use and employ a portion of its movable personal property, it is legitimate for the latter to impose upon said property thus used and employ- its fair share of the burdens of taxation imposed upon similar property used by its own citizens,—we think that such a tax may be properly assessed and collected in cases like the present, where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing according to the exigencies of the business, and that the tax may be fixed by an appraisement of the value of the property so habitually used and employed."

79 In the case of the complainant at the bar against The Board of Assessors, 52 An., 1319, the question came up in another form. The Comptoir claimed that non-negotiable notes held by it in New Orleans, resulting from its business here were to be considered as being constructively in France, the domicile of the plaintiff company; and that a promissory note follows as much the domicile of the creditor as does an open account.

The court declined to accept this view; referred to the decision above cited in the case of New Orleans *vs.* Stemple; and stated that a non-negotiable note is certainly sufficiently "concrete in form" to be made an object of taxation. The court said that the facts of the case brought it squarely under the decisions in the case of the Banana Co. and of Strauss & Co., above referred to. It also distinguished the case from that of Clason & Co., above cited, using the following language:

"The facts of the case are entirely different. Here the foreign corporation is engaged in a regular business, investing and reinvesting the monies through an agent in this State. In the other case, Clason & Co. were merely the agents of an English firm for the purchase of cotton to be shipped by them at once to the firm in Europe. Instead of paying for this cotton by means of bills of exchange transferred to the vendors, which they themselves would have cashed, the agents for convenience, had the bills cashed, deposited the amount in bank, and drew against the funds in favor of the sellers."

A review of the facts of the case at the bar and of the decisions above cited, suggests that the main question of law in this case is not entirely free from difficulty. There is a border land in such matters, and it is not always easy to say on which side of the line the objects of dispute in this case should be located.

The revenue act of Louisiana No. 170 of 1898 begins by the statement that the assessment and taxation it contemplates is

80 to be upon "*all the property situated in the State of Louisiana.*"

The legislature seems to concede that property not situated in the State of Louisiana is not to be assessed and taxed under her authority. We are thus brought face to face with the question, Were these credits of $175,000 in the year 1901 situated in the State of Louisiana? Were they in the category of credits like the amounts due for premiums in the cases of the Liverpool, etc., Ins. Co.; or, on the other hand, were they governed by the rule laid down as to the non-negotiable promissory notes in the case of the

Comptoir decided in the 52 An., and the objects assessed in the case of Stempel.

The point urged by the counsel of the city and State that the change of methods in the complainant's business as stated above in the recital of facts, was an evasion of the rule laid down in its case in the 52 An., does not seem to be valid, and does not seem to be supported by the case of Mitchell, 91 U. S., 206. The complainant at the bar has paid a license tax of an undisputed amount on all its business operations in New Orleans for the year 1901; and has paid or is ready to pay, a tax on money here in possession to an undisputed amount. The question to be solved without prepossession and in the dry light of legal logic, concerns alone the situs of the credits above mentioned.

Did they possess the concrete form mentioned in the 52nd. Annual, or were they, on the other hand, so intangible and incorporeal as to have their situs at the domicile of the complainant in Paris?

It seems to the undersigned that these credits were, in the language of the common law, mere choses in action, and therefore, merely rights to recover money. A mere right to recover money is intangible and incorporeal, although, the money itself, when eventually recovered, may be something corporeal.

Or if we use the terminology of the civil law, which might properly be used in this case, these credits were *res incorporales*.

To use the language of Gaius, as cited in the Digest of
81 Justinian, Lib. I, title 8, par. 1, sec. 1,—Incorporeal things are those which cannot be touched, being those that consist in a right, *in jure consistunt;* for example, obligations in whatever manner they are contracted; and the right of obligation itself is no less incorporeal, as he points out, although it may refer to something corporeal.

The Civil Code of Louisiana, article 460, following the same ideas, states that incorporeal things are such as are not manifest to the senses and which are conceived only by the understanding; such as the rights of inheritance, servitudes, and obligations.

The credits that have been assessed in the instant case appear to be of this character. In the termonology of the civil law, they are obligations or legal ties that bind persons in New Orleans to a person in France, and are in no way apparent to the physical senses. As the Louisiana Code declares, they are conceived only by the understanding. They have no more concrete existence than a right to a specific performance of a contract to convey land. They are not the subject of physical delivery or of asportation. They do not differ in any legal aspect from the foreign insurance company for premiums as ruled upon in the cases above cited.

It follows that they have their situs in France, and not in Louisiana; and that the complainant at the bar is entitled to the relief for which it prays.

Respectfully submitted.

(Signed) W. W. HOWE,
Special Master.

Feb'y 12, 1902.

82 *Exceptions to Master's Report.*

Filed by Defendants March 6th, 1902.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12949.

Now come The Board of Assessors for the Parish of Orleans, The City of New Orleans, George B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector, first district parish of Orleans, respondents in the above entitled cause, and beg leave to tender the following exceptions to the report of Hon. W. W. Howe, special master, filed herein on February 14th, 1902.—

1st. These respondents except to said report, in that it finds that said complainant is entitled to have the relief for which it prays.

2nd. These respondents except to said report, in that it finds as a matter of fact and of law that complainant has no credits or money loaned on interest within this State, subject to taxation.

3rd. Responde-ts except to said report, in that it finds as a matter of law that complainant should have within this State written evidences of amounts due it as a result of business done within this State, to bring it within the jurisdiction of the taxing authorities of this State.

4th. Respondents except to said report, in that it finds as a matter of fact that complainant has within this State no such written evidences of amounts due it for business done within this State.

5th. Respondents except to said report, in that it finds as a matter of law that a non-resident can carry on business within this
83 State without paying a corresponding tax with that exacted of the citizens of the State engaged in a similar business.

6th. Respondents except to said report, in that it finds that the change in 1900 of complainant's method of doing business, as compared with the method in vogue in 1899 and previous years was not a shift to avoid taxation and was not made so as to avoid the decision of the honorable, the supreme court of the State of Louisiana in the case of Comptoir Nationale D'Escompte de Paris *vs.* Board of Assessors, reported in 52 La. Ann., page —.

Wherefore, respondents pray that the exceptions hereinabove set forth to said master's report, be maintained, that said master's report be rejected, and that complainant's bill be dismissed at its costs.

(Signed) SAM'L L. GILMORE,
City Attorney,

(Signed) H. G. DUPRE.
Ass't City Attorney,
Solicitors for the City of New Orleans and Geo. B. Penrose, Treasurer of the City of New Orleans.

(Signed) E. K. SKINNER,
Solicitor for Board of Assessors.

(Signed) F. C. ZACHARIE,
Solicitor for State Tax Collector.

84 *Motion to Set for Argument.*

Filed by Complainant March 12th, 1902.

United States Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
THE BOARD OF ASSESSORS ET AL. } No. 12949.

On motion of Harry H. Hall, solicitor for complainant, and on suggesting that Judge W. W. Howe to whom this case was referred as a special master, with instructions to report upon the law and the facts has filed this report and that exceptions thereto have been filed by respondents;

It is ordered that said exceptions be set for argument for Saturday, March 22nd, at 11 a. m.

N. O. M'ch 11th, 1902.

85 *Hearing and Submission of Exceptions.*

Extract from the Minutes.

NEW ORLEANS, SATURDAY, *March 22nd*, 1902.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

COMPTOIR NATIONALE D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS. } No. 12949.

This cause came on this day to be heard upon exceptions filed by the defendants to the report of W. W. Howe, special master herein;

Present: H. Garland Dupre, for Geo. B. Penrose city treasurer of New Orleans, La E. K. Skinner for the board of assessors. F. C. Zacharie, for State tax collector. Harry H. Hall, for the complainant in suit,

and was argued by counsel and submitted when the court took time to consider.

Order Overruling Exceptions and Confirming Report.

Extract from the Minutes.

NEW ORLEANS, TUESDAY, *April 1st*, 1902.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS. } No. 12949.

This cause came — to be heard at a former day upon exceptions filed by the defendants to the report of William W. Howe, special master

herein, and after arguments of counsel for the parties was submitted;

Whereupon and on consideration thereof it is ordered, adjudged, and decreed that the said exceptions be overruled and the master's report confirmed.

86 *Final Decree.*

Filed April 9, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET AL. } No. 12949.

Decree.

This case having been argued before the court on exceptions to the master's report, by Messrs. H. G. Dupre, solicitor for the City of New Orleans, and E. K. Skinner and F. C. Zacharie, solicitors for the Board of Assessors and the State Tax Collector and an order having been herein entered after due hearing, overruling the exceptions to the report of Mr. W. W. Howe, master, and confirming the said report,

It is now ordered adjudged and decreed that there be judgment herein in favor of complainant and against the City of New Orleans, its officers, agents and attorneys and representatives, Geo. B. Penrose, treasurer of the city of New Orleans, and against John Fitzpatrick, State tax collector of the first district of the city of New Orleans, enjoining forbidding and prohibiting them or each of them in any way or by any proceedings whatever from enforcing or attempting to enforce the collection of taxes of the city of New Orleans and the State of Louisiana based upon the assessment made by the board of assessors for the parish of Orleans, for the year 1901 against the Comptoir National D'Escompte de Paris, to-wit:

"*Money loaned on interest, all credits and all bills receivable for money loaned on interest or advanced or for goods sold—$175.000,*" and from seizing, advertising, selling or attempting to sell any property whatever belonging to the said Comptoir National D'Escompte de Paris to pay and satisfy any demand or claim whatever for taxes levied upon the aforesaid assessment against the property of your orator.

87 It is further ordered and decreed that the said assessment and all municipal and State taxes thereon levied be and they hereby are decreed to be illegal, void and of no effect, and it is ordered that the said assessment be cancelled from the assessment rolls for the year 1901.

It is further ordered, adjudged and decreed that the preliminary injunction herein issued be made perpetual and that the defendants herein pay all costs of this proceeding including the sum of

three hundred dollars now allowed W. W. Howe, Esq., special master as a fee for his services and hereby taxed as costs in this cause.
N. O., April 9/1902.
(Signed) CHARLES PARLANGE,
U. S. Judge.

O. K. as to form.
E. K. SKINNER.
F. C. ZACHARIE,
Per E. K. SKINNER.
H. G. DUPRE,
Ass't City Att'y.

88 *Petition and Order for Appeal.*

Filed Oct. 17, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS *vs.* BOARD OF ASSESSORS. } No. 12949.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

The petition of The State Board of Assessors for the Parish of Orleans, of The City of New Orleans, of George B. Penrose, treasurer of the city of New Orleans, and of John Fitzpatrick, State tax collector for the first municipal district, parish of Orleans, all made defendants herein, respectfully represent:

That the said defendant petitioners are aggrieved by the decree of this honorable court herein rendered and signed on the 9th day of April, 1902; that there is error to the prejudice of said defendants in said decree, by which they will be irreparably injured.

Wherefore petitioners pray that they be allowed an appeal from said decree returnable to the Supreme Court of the United States, according to law, upon petitioners giving bond in an amount to be fixed by the court, and that the Comptoir Nationale D'Escompte de Paris through its proper officer, be cited to answer this appeal, and petitioners pray for all special and general relief.

(Signed) S. L. GILMORE, *City Att'y,*
H. G. DUPRE, *Ass't City Att'y,*
Solicitors for the City of New Orleans and Geo. B. Penrose, Treasurer of City of New Orleans.
(S'g'd) F. C. ZACHARIE,
Solicitor for John Fitzpatrick, State Tax Col'r.
(S'g'd) E. K. SKINNER,
Solicitor for Board of Assessors.

Order.

Let an appeal be granted petitioners as prayed for, returnable to the Supreme Court of the United States at the city of Washington within 30 days from the date hereof, upon petitioners giving bond with good and sufficient security in the sum of $400.00 conditioned as the law directs.

(Signed) CHARLES PARLANGE,
U. S. Judge.

New Orleans, October 16th, 1902.

89 *Assignment of Errors.*

Filed October 16, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12949.

In equity, 5th circuit.

Now into this honorable court comes The City of New Orleans, Board of State Assessors, for the Parish of Orleans, John Fitzpatrick, State tax collector for the first municipal district of the city of New Orleans, and George B. Penrose of the city of New Orleans, defendants and respondents herein, and assign the following errors in the decree of this honorable court of date April 9th, 1902.

(1.)

The court erred in holding that the assessment made for the year 1901, in the name of the Comptoir National D'Escompte de Paris plaintiffs and complainants herein on money at interest, all credits and all bills receivable for money loaned on interest, or advanced for goods sold $175,000 was an illegal assessment for the reason that said property was legally assessed under section 7 of act No. 170 of 1898, Statutes of Louisiana, inasmuch as the evidence shows that the property assessed consisted of written evidences of debt, in the concrete and tangible form of cheques representing money loaned at interest all of which were at the time of the assessment was made, and at the time the cause was tried, and still are in the possession of an agent of plaintiffs and complainants, residing in the city of New Orleans, and as such taxable under the laws of the State of Louisiana.

(2.)

The court erred in holding that the assessment and municipal tax levied thereon were illegal, and violative of the constitution and laws of the State of Louisiana, and the Constitution of t' e United States.

(3.)

The court erred in holding that the change made in the manner of doing business in 1901 by complainants and plaintiffs, was
90 not a shift to avoid taxation and to defraud the revenue of the city and the State when the circumstantial evidence adduced shows that such was the purpose and design, which cannot and should not be supported and maintained by a court of equity.

Wherefore respondents and defendants pray that the decree of this honorable court be reversed on the appeal to be herein granted.

(Signed) F. C. ZACHARIE,
Solicitor for Tax Collector, John Fitzpatrick.

(") E. K. SKINNER,
Att'y Board of Assessors.

(") SAM'L L. GILMORE,
City Attorney.

91 *Bond for Appeal.*

Filed Oct. 18, 1902.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
vs.
BOARD OF ASSESSORS ET ALS.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Martin Behrman, president board of assessors, city of New Orleans, represented by George B. Penrose, treasurer of the city of New Orleans, and John Fitzpatrick, State tax collector 1st district of Orleans, and Joseph H. McEvoy, as surety are held and firmly bound, jointly and severally unto the Comptoir National D'Escompte de Paris in the sum of four hundred dollars (400), lawful money of the United States of America to be paid to the said Comptoir National D'Escompte de Paris, its heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves and each of us by himself and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the — day of —— in the year of our Lord nineteen hundred and two.

Whereas the said Martin Behrman, Geo. B. Penrose, and John Fitzpatrick, in their official capacities having heretofore to-wit, on the — day of —— 1902, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered on the ninth day of April 1902 by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Comptoir National D'Escompte de Paris *versus* Board of Assessors *et als.* No. 12.949 of the docket thereof.

Now the condition of the above obligation is, that if, the above bounden Martin Berhman, Geo. B. Penrose and John Fitzpatrick

shall prosecute said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of.

(S'g'd) MARTIN BEHRMAN. [L. S.]
JOHN FITZPATRICK,
Tax Collector.
GEO. B. PENROSE, *Treasurer.*
PAUL CAPDEVILLE, *Mayor.*
JOSEPH H. McEVOY, *Surety.*

Bond approved
(S'g'd) CHARLES PARLANGE,
U. S. Judge.

Oct. 18, 1902.

92 UNITED STATES OF AMERICA, } ss:
E. District of Louisiana, }

Personally appeared, Joseph McEvoy, who being duly sworn deposes and says that he is the surety on the within bond, that he resides in the city of New Orleans, State of Louisiana and is worth the full sum of four hundred ($400.) dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) JOSEPH H. McEVOY,
1901 *Tulane Ave.*

Subscribed and sworn before me this 17th. day of October, 1902.

(Signed) EMMET D. CRAIG,
U. S. Commissioner, E. District of Louisiana, at New Orleans, La.

[SEAL.]

93 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Comptoir National D'Escompte de Paris, through its proper officer or agent at New Orleans, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within 30 days from date hereof, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana wherein The State Board of Assessors, The State Tax Collector of 1st Municipal District of Orleans & George B. Penrose, treasurer of the city of New Orleans, and The City of New Orleans are defendants, respondents & appellants and The Comptoir National D'Escompte de Paris is complainant and appellee in suit No.

12949 U. S. circuit court for the eastern district of Louisiana to show cause, if any there be, why the judgment rendered against the said defendants respondents and appellants as in said cause, suit and case mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 18 day of October in the year of our Lord one thousand nine hundred and two.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

(Signed) *CHARLES PARLANGE, Judge.*

CLERK'S OFFICE.

A true copy of the original citation.

H. J. CARTER, *Clerk.*

New Orleans, La., October 18, 1902.

94 [Endorsed:] P. d'Orgeval, agt. E. Return. United States circuit court, eastern district of Louisiana. No. 12949. Comptoir National D'Escompte de Paris *vs.* Board of Assessors *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Oct. 20 1902 H. J. Carter clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Oct. 20, '02.

On this 20th day of October, 1902 before the undersigned authority personally appeared J. H. Patin, deputy U. S. marshal for the eastern district of Louisiana, known to me as such, who being duly sworn deposes and says that on the 20th day of October, 1902 affiant served this writ on the Comptoir Nationale D'Escompte de Paris by handing the same to the agent thereof Mr. P. d'Orgeval, in person, at the office of said company, in the city of New Orleans, Louisiana.

J. H. PATIN,
U. S. Deputy Marshal.

Sworn to and subscribed before me on this 20th day of October, 1902.

{ Seal of Henry J. Carter, U. S. Commissioner, E. Dist. of La., New Orleans, La. }

H. J. CARTER,
U. S. Commissioner.

95 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Henry J. Carter, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 94 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case of The Comptoir Nationale D'Escompte de Paris *versus* The City of New Orleans, *et als.* No. 12949 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5th day of November A. D. 1902.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify, that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court: That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 5th day of November A. D., 1902.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: File No. 18,732. E. Louisiana C. C. U. S. Term No. 157. The State Board of Assessors for the Parish of Orleans, The City of New Orleans *et al.*, appellants, *vs.* The Comptoir National D'Escompte de Paris. Filed November 11", 1902.

FILE COPY. 1460

Supreme Court of the United States.

THE STATE BOARD OF ASSESSORS for the Parish of Orleans, *et als.*, Appellants,

vs.

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS, Appellees.

Office Supreme Court U. S.
FILED
MAR 10 1903
JAMES H. McKENNEY, Clerk.

October Term, 1902.
No. 504.

1897.

Appeal from the United States Circuit Court for the Fifth Circuit.

MOTION TO ADVANCE.

And now come the defendants and appellants herein, to-wit: the State Board of Assessors for the Parish of Orleans, the State Tax Collector for the First Municipal District of the Parish, and the City of New Orleans, Louisiana, and the "Comptoir Nationale D'escompte de Paris," plaintiff and appellee, and jointly move this Honorable Court to advance this cause upon the docket, and to hear it at as early a day as the convenience of the Court will permit.

The reasons for this application are as follows:

1st. Because the assessment involves questions of general interest throughout the United States, and their prompt and final decision is important to the State of Louisiana and the City of New Orleans for the revenue

to be produced thereby, and affects all the States.

2nd. It involves the taxability of the rights, credits and intangible assets of a non-resident, doing business in a particular State and County.

3rd. It involves the question, whether the tax liability depends upon the location of the evidence of the debt.

Under these circumstances counsel respectfully pray and suggest that the questions submitted are of such wide-spread and sweeping importance to the various State, County and subordinate taxing officers throughout the entire country, that this case should be finally determined by the Supreme Court of the land, and should be determined as speedily as your Honorable Court may deem proper.

Dated New Orleans, March 1903.

Respectfully submitted,

[Signed] Saml L. Gilmore

H. L. Dudre

Solicitors City of New Orleans and for Geo. B. Penrose, Treasurer.

E. E. Zacharie

Solicitor for State Tax Collector.

E. K. Kimmel

Solicitor for Board of Assessors.

Solicitor for Comptoir National D'escompte de Paris.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONALE D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF OF RESPONDENTS AND APPELLANTS.

STATEMENT OF THE CASE.

The Comptoir Nationale D'Escompte de Paris, Complainant and Appellee in the above cause, is a corporation organized under the laws of France. It does business in many parts of the world; for a number of years it has had a branch office in the City of New Orleans, State of Louisiana, where it is engaged in the business of buying and selling foreign exchange, and lending money, obtained by the sale of such exchange, upon agricultural

products held in local warehouses or destined for shipment to foreign countries; and upon City, State or premium bonds. (R., p. 26.)

In the year 1901 the Board of Assessors of the Parish of Orleans, whose duty it is to list property for State and municipal taxation, levied against the Comptoir Nationale D'Escompte de Paris the following assessment:

> "Office furniture, $1,000; money in possession, on deposit or in hand, $20,000; money loaned on interest or advanced, or for goods sold, $175,000."

The taxes on the first two items, office furniture and money in possession, were duly paid, but the Comptoir Nationale D'Escompte de Paris, denying liability under the last item, "money loaned on interest," etc., filed a bill in equity in the United States Circuit Court for the Eastern District of Louisiana against the Board of Assessors, the City of New Orleans and the State and City officials charged with the collection of taxes, to cancel said assessment and to enjoin the enforcement of the taxes accruing thereunder.

Complainant averred that it had no money loaned on interest, or credits or bills receivable for money loaned on interest, or advanced, or for goods sold within the State of Louisiana and subject to the taxing jurisdiction of that State; that whatever sums it loaned in said State were merely debts due it; that it had no evidence of such indebtedness within the State; that accordingly these debts had no legal situs in Louisiana, were not taxable there and could only be taxed at the domicile of the Comptoir Nationale D'Escompte de Paris in France. It therefore averred that the attempted assessment was extra-territorial, and that such an assessment, and the Louisiana statutes justifying it, were in violation of the Constitution and jurisprudence of Louisiana and in contravention with the Federal Constitution and jurispru-

dence, and especially, in violation of that clause of the 14th amendment which declares:

> "Nor shall any State deny to any person within its jurisdiction equal protection of its laws, nor deprive any person of property without due process of law."

Respondents, by way of answer, upheld the legality of the assessment, asserted that the complainant had money loaned on interest, etc., within the State, amenable to its taxing power, and charged that if said complainant had changed its manner of doing business from the method pursued up to 1900, so that it no longer kept evidences of indebtedness due it within the State, such change had been made for the undoubted purpose of circumventing local taxation and with the obvious object of escaping the effect of the decision of the Honorable the Supreme Court of Louisiana in the case of the *Comptoir Nationale D'Escompte de Paris vs. Board of Assessors*, 52 La. Annual, page 1319, wherein the complainant had been adjudged liable to taxation under an assessment identical with that sought to be cancelled in the present suit. There was judgment in the Circuit Court in favor of the Comptoir Nationale D'Escompte de Paris, annulling the assessment and enjoining the collection of the tax, and respondents prosecuted this appeal directly to the Supreme Court of the United States.

Facts of the Case.

We deem it essential to a proper appreciation of the position of respondents, to bring to the Court's attention certain uncontroverted facts disclosed by the record, before discussing the law of the case.

As appears by the testimony of Mr. Albert Breton (R. pp. 18, 34), who was the agent of the complainant in the City of New Orleans from 1895 to April, 1901, the Comptoir Nationale D'Escompte de Paris has had an office in

said city and has been doing business there for a number of years. Its business consists of buying and selling exchange and lending money upon agricultural products on deposit in local warehouses or in process of export, or upon State, City and premium bonds. These loans amount to more than one million dollars annually. (R., p. 27.) Payment thereof is secured by pledge, as collateral, of the warehouse receipts or bills of lading covering the goods stored or to be shipped, or by pledge of the bonds themselves, which collateral remains in New Orleans with the agent of the Comptoir Nationale D'Escompte de Paris until the close of the entire transaction.

Up to the year 1900 borrowers of money were required to sign and deposit with the lender, who held them in New Orleans with the collateral, non-negotiable notes reading as follows:

> "——— promise to pay to Comptoir Nationale D'Escompte de Paris, for value received, ———, with interest at the rate of——per cent. per annum until paid. This note is non-negotiable and is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment, or should the drawer thereof, when called on, refuse or fail to keep the margin hereon good, the Comptoir Nationale D'Escompte de Paris is authorized to sell the said securities at public or private sale, without recourse to legal proceedings, and to make any transfers that may be required, applying the proceeds of sale towards payment of this note."

In 1898, however, the Board of Assessors levied an assessment against the Comptoir Nationale D'Escompte de Paris for money loaned on interest, all credits, etc., $50,000 (similar in all respects to the assessment assailed in this cause), which was resisted by the Comptoir Nationale D'Escompte de Paris in the Civil District Court for the Parish of Orleans on the ground that it had no

such property in Louisiana subject to taxation; that whatever debts were due it were beyond the taxing jurisdiction of the State; that the non-negotiable notes held by it in Louisiana, a copy whereof has been reproduced above, followed the domicile of the owner and were therefore taxable in Paris, France, and not in New Orleans, Louisiana. The matter went on appeal to the Supreme Court of Louisiana, and its conclusions are reported in the *52 La. Annual, page 1319.* We will not attempt to compress the decision of that tribunal into the present brief. Absolute familiarity with it, however, is indispensable to an appreciation of this cause, and we accordingly invite your Honors to a most careful examination thereof. Suffice it to say here that the Court reviewed, elaborately, every issue in the case, discussed in all its detail the character of the business done by complainant from the inception of a loan to its extinction, including the means of raising the money loaned, the evidence of the debt obtained, the security or collateral required, the continuing nature of the business. Its decree maintained the assessment, the Court holding "that non-negotiable notes representing loans in Louisiana, made by the agent of a corporation doing business therein, when kept within the State by the agent, may be subject to taxes by the law of the State in which they are held." *52 La. Annual, page 1319.*

About the time of this decision, complainant changed its method of doing business by the significant discontinuance of the practice of requiring borrowers to execute non-negotiable promissory notes. (R., p. 30.) In lieu thereof borrowers, since 1900, have been allowed to overdraw. A system of checks and interest-bearing over-drafts has been substituted for the non-negotiable notes declared taxable by the Court; otherwise the business, as the Supreme Court of Louisiana considered it in 1900, and

the business as disclosed by this record are identical. The money loaned is obtained in the same way, the same securities are required, the same hypothecation of the collateral (a form of which hypothecation appears in the record at page 40 as Exhibit E) is exacted and retained. The borrower now obtains a credit on the London or Paris office of the Comptoir Nationale D'Escompte de Paris, draws his draft thereon and sells same, or he gets the money direct from the local agent, and then, as an evidence of the transaction, draws his check on the local agency for the amount of the loan, which check is retained by the local agency as an evidence that such an amount has been paid by it to the borrower. Let Mr. Breton speak for himself, even though his limited acquaintance with the English language makes his answers somewhat difficult to follow (R., p. 32):

> "A.—No, I am going to explain the business; well, a client comes to me and says to me, and says I want $50,000 and I propose to give you such collateral, bills of lading for cotton or for grain, or warehouse, or bonded warehouse receipts for cotton or for cake, or cotton seed meal, any kind of those products. If I approve, ready to do the business, I say yes. Well, there are two ways of letting him have that money; very often I open a credit in his favor on the Comptoir Nationale D'Escompte de Paris in Paris or London, then he draws against that credit—I mean to say, he sells his draft on the Comptoir Nationale D'Escompte de Paris to anybody he pleases, either in New Orleans or in New York; if the loan is for a short period, instead of asking him to draw I will draw it myself and hand him the money.
>
> "Q.—You sell your own exchange?
>
> "A.—Then he is overdrawn on my bank, and, to show he has overdrawn I tell him, you draw a check on me, and he gives me that check, and then I make him sign a general letter of hypothecation (which will be shown to the attorney). Outside of that we

have nothing of importance—I don't see anything else.

"Q.—These securities and checks remain in your office here in New Orleans?

"A.—Yes, sir; the checks are cash vouchers for the cashier, who has them to show that he paid the money. * * *

"Q.—Does he take up again the check he has given?

"A.—No, sir.

"Q.—When the transaction is concluded what becomes of that check that he has drawn against your bank?

"A.—The check is a cash voucher; it stays among the cash vouchers of the day on which it is paid and remains perpetually in the custody of the Comptoir Nationale D'Escompte de Paris for the cashier to show that he has paid that check. * * *"

(R., p. 31.)

"Q.—Did you charge interest on your over-drafts?

"A.—Yes, sir.

"Q.—Then what evidence of indebtedness beside the account on your books with your customers have you that these people owe you anything at all?

"A.—We have a record of the settlements which we make every month. * * *

"Q.—What evidence have you that he owes you anything?

"A.—I have got a check from him, he is overdrawn on my books.

"Q.—For the amount you have loaned him?

"A.—Yes, sir. * * *".

(R., bottom pages 26, 27.)

"Q.—Do you know or can you state approximately the amount of loans that you made during the year 1900?

"A.—No, I cannot.

"Q.—About?

"A.—Well, I made so many loans, you know, only for a short period, and I cannot tell the total amount—it would be too far away, the exact amount.

"Q.—Was it over a million dollars, taking it all together?

"A.—Yes.

"Q.—How much over a million?

"A.—I don't know.

"Q.—Was it over two millions?

"A.—No, sir."

These are the facts of the case. We have deemed it advisable to quote freely from the record, but if the Comptoir's discontinuance in its business of the use of the non-negotiable notes, above alluded to, be borne in mind, the present record might well be dispensed with and the findings of the Supreme Court of Louisiana, as set forth in its opinion, be substituted therefor.

ARGUMENT.

We propose to show, first, that the assessment complained of, and the statute warranting the assessment, violate no provision of the Constitution of the United States; second, that such assessment has been levied in strict obedience to the Constitution and revenue laws of the State of Louisiana; and third, that whatever change has been made in its method of doing business by the complainant since the decision of the Honorable the Supreme Court of Louisiana in the case of *Comptoir Nationale D'Escompte de Paris vs. Board of Assessors*, 52 La. Annual, page 1319, has been resorted to for the express purpose of avoiding taxation, and constitutes such a shift to escape taxation as will preclude a Court of Equity from granting relief to complainant.

I.

No Violation of Federal Constitution or Jurisprudence.

How this assessment, levied under the conditions outlined above, conflicts with any provision of the Constitution of the United States, and especially with the 14th

Amendment thereto, it is difficult to see. The Comptoir Nationale D'Escompte de Paris is receiving the same protection from the laws of Louisiana accorded any other person. Any other non-resident corporation, under similar circumstances, would be similarly assessed, and citizens of the State of Louisiana, themselves, are paying taxes at this moment under identical conditions. Nor is there any deprivation of property without due process of law. *Omnia rite acta.* The assessment has been levied by the proper authorities under warrant of law, as we will show. The taxpayer, in return, is buying and selling and lending under the protecting arm of the law of Louisiana; its Courts are open for the enforcement of obligations due it; its property is safe under the police protection accorded by the civil authorities. It is simply being made to do what all citizens of Louisiana are required to do—contribute its just proportion of the general burden of taxation. The assessment attacked is constitutional.

Complainant's whole case, of course, is predicated on the theory that its millions of dollars at interest in Louisiana and the credits due it in that State are debts, and as such taxable alone at its domicile outside of Louisiana, namely, in Paris, France. It declares upon the doctrine *mobilia sequuntur personam.* Now, we are aware that the idea represented in this maxim of the law is the result of a proper comity that should prevail among nations and States. Its origin is respectable, its age venerable, and its purpose benevolent, but we do not understand that any sanctity hedges about it such as attaches to a doctrine having constitutional warrant. It is a mere fiction of the law and has no foundation in the Constitution of the United States.

Nor has it ever been treated as a doctrine of universal application by the Supreme Court of the United States, whose jurisprudence has consistently recognized it as

subject to modification by any sovereign State, whenever so deemed desirable. Even in the case of the *State Tax on Foreign Held Bonds* (15 Wallace), which is always quoted to maintain the judicial recognition of the doctrine *mobilia sequuntur personam*, the limitations of that doctrine were noted, and actual situs of certain personal property was declared to determine its taxability, and not the domicile of the owner, if State statutes so decreed. We will not attempt to trace the jurisprudence of this tribunal since that decision, as such a course would cover too well-worn a path, but each succeeding expression of the Court has undermined, more and more, the significance of this legal maxim, and has fortified the right of control by the State on this subject-matter. Over and over again has the right of the State to tax personal property within its limits been upheld, even where the owner was neither a citizen nor a resident of the State imposing the tax. *Tappan vs. Merchants' Bank*, 19 Wallace, 490; *State R. R. Tax Case*, 92 U. S. 575; *Coe vs. Errol*, 116 U. S. 517; *Pullman vs. Pennsylvania*, 141 U. S.

Neither fictions like *mobilia sequuntur personam*, nor yet sound legal principles like *stare decisis*, have availed to check this Court in its evident determination to maintain the authority of the States in these matters of taxation. When the Foreign Held Bond decision, for instance, was invoked to prevent the taxation in Oregon of mortgages on land in that State owned by non-residents —a proposition unquestionably reprobated in the Foreign Hend Bond case—the Supreme Court of the United States did not hesitate to declare the language used in 15 Wallace, *obiter*, and irreconciliable with other decisions, and promptly subjected such mortgages to taxation, making statutory law superior to artificial distinctions. *Savings Society vs. Multnomah Co.*, 169 U. S. 421. Then followed the epoch-making decision of *Stempel vs. City*, 175 U. S.,

where notes and bonds were held assessable away from the domicile of the owner. The similar case of *Bristol vs. Washington County*, 177 U. S., a little later, maintained once more the power of the State to deal with personal property within its borders, regardless of the domicile of the owner. But the death blow to the theory that personal property necessarily and invariably follows the owner, for the purpose of taxation, was struck in *Blackstone vs. Miller*, 188 U. S. 205, when this Court, asking the question, "What gives the debt validity?" answered as follows:

> "Nothing but the fact that the law of the place where the debtor is, will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona* and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone. Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and policy of a State conflict with the fiction due to historical tradition, the fiction must give way."

The Court thus shattered the contention urged so tenaciously that the person of the debtor played no part in

fixing the taxing situs of personal property and disposed of any previously expressed contrary views in the Foreign Held Bond case by "cutting that case down to its precise point."

Our appreciation then of the jurisprudence of the United States Supreme Court may be summed up as follows: that while the doctrine of *mobilia sequuntur personam* prevails in the absence of contrary statutory authority, the right of the State to modify it and to subject personal property within its borders to taxation, independently of the domicile of the owner, is clear. We do not mean that this Court is impotent to check any abuse of this power by a State, but we understand that your Honors will, in determining whether the taxing jurisdiction of a State extends to a particular class of property within its borders, such, for instance, as obligations, credits and the like, take into consideration not only the physical aspect of the property and the place where it chances to be kept, but also the home of the debtor, the laws of the State where the debt is collectible, the forum where it can be enforced, the nature of the business, whether transitory or permanent, by which such debt is created, and the property that has accumulated as a result of such business. In this conclusion we are fortified by the comprehensive review of the jurisprudence of the Supreme Court of the United States on this subject, recently set forth by the highest court of Mississippi in the well-considered case of *Adams vs. Colonial & U. S. Mortgage Co.*, reported in 34 Southern Reporter, page 460.

Now, measured by this test of the taxing jurisdiction of the State of Louisiana, we submit that the assessment levied against the Comptoir Nationale D'Escompte de Paris is legal and proper. Here is a foreign concern doing a business in the State of Louisiana, of lending money on collateral exceeding one million dollars per

[illegible], through an agent who has an office in the State and acts without consultation with his principals in Paris in ordinary business transactions. If the State of Louisiana sees fit, by statute, to tax this non-resident concern and to put it on the same plane as its own citizens, we see no violation therein of the Federal Constitution or jurisprudence. The Constitution of the United States affords but scant comfort to those who invoke it in an effort to ecape their just obligations to a sovereign State.

II.

No Violation of Louisiana Constitution, Laws or Jurisprudence.

We come now to our second proposition, that the assessment complained of transgresses no provision of the State of Louisiana, nor any law of that State. Article 225 of the Constitution of 1898 declares that "all property should be taxed in proportion to its value." In obedience to that constitutional mandate the General Assembly, in the same year, adopted Act 170, which imposes a tax on the assessed valuation of all property within the State, except such as is expressly exempt by law. Section 1 of Act 170 affirmatively declares the term "property" to mean and include

> "all personal property, all rights, credits, bonds and securities, promissory notes, open accounts and other obligations, all cash, all money loaned at interest and all movable and immovable, corporeal and incorporeal articles or things of value owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever."

Section 7 reiterates, that it is the duty of the tax assessors to place upon the assessment rolls all property subject to taxation, and concludes with the special admonition that

> "this shall apply with equal force to any person or persons representing, in this State, business interests

> that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative."

This statute is identical with Act 106 of 1890, which the present tribunal had under consideration in the Stempel case. It is comprehensive enough to include all conceivable forms of property, and it is specific enough to cover any particular class thereof. It provides for the taxation of all property and it ordains especially the taxation of all rights, credits, money loaned at interest, etc. Not only must the citizens of the State pay taxes on these things, but the statute says that all persons doing business within the State must pay taxes thereon at the business domicile of said non-resident or his agent within the State.

Here then is the most ample statutory warrant for the assessment in Louisiana of the credits and obligations due the Comptoir Nationale D'Escompte de Paris as a result of its business done in Louisiana. If a Louisiana statute declares them assessable in that State, what reason is there in logic or equity or common sense, for relegating them to France for taxation? Are we to make a fetich of a Latin maxim and exalt fictions above actualities? Certainly, if the plain words and spirit of a statute are not to be disregarded, Act 170 of 1898 means and decrees that movable property in Louisiana is to be assessed in Louisiana without consideration of the domicile of the owner of such property. The assessment against the Comptoir Nationale D'Escompte de Paris not only violates no law of Louisiana, but is in absolute accord with the spirit and letter thereof.

But complainant insists that the interpretation which has been placed on this and similar statutes by the Supreme Court of Louisiana justifies its contentions in this case. It argues that the taxation in Louisiana of money loaned at interest, credits, etc., and owned by non-residents, is repugnant to the jurisprudence of Louisiana. Now, we admit that the Courts of Louisiana have been loath to abandon the doctrine of *mobilia sequuntur personam*, and that, in spite of legislative behest, they have refused to sanction taxation of personal property away from the domicile of the owner, unless such personal property assumed a "concrete" form, to use the adjective in vogue in this line of decision. We may say, in passing, that this use of the word "concrete" does not appear to be justified by any definition thereof to be found in any law lexicon or in even any ordinary dictionary, and we presume that the word is used in the sense of "tangible." We may add, further, that this test of "concreteness" or "tangibility" as a prerequisite to taxation, is absolutely absent from the statutory law of the State, and that it is a pure piece of judicial legislation. But a discussion of the action of the Supreme Court of Louisiana in thus injecting as criteria of taxability, conditions and limitations not countenanced by statute, would serve no useful purpose here. We accept the test of the Louisiana Court, that movables owned by non-residents will not be taxed in Louisiana unless they have been localized in some tangible form, but we ask, what is the standard of tangibility required by that tribunal? For instance, in the leading case of *Meyer vs. Sheriff*, 34 La. Annual, 645, the Court refused to tolerate the assessment of a judgment away from the domicile of the owner, and yet, in 51 Annual, 1033, the same tribunal declared that the taxing power of the State extended to judgments owned by corporations actively engaged in business within the State, without regard to the owner's domicile. A learned judge, in 44 Annual, 770,

guardedly declared that "possibly negotiable promissory notes can acquire a taxing situs apart from the residence of the owner," and in 52 Annual, 1319, the Court boldly held that non-negotiable notes can be assessed away from the domicile of the owner. In 46 Annual, page 1, the Court rejected an assessment of a deposit in bank by a non-resident, and in 49 Annual, page 44, and again, page 1173, the former decision was restricted to the particular facts of the case and bank deposits were subjected to taxation.

These citations show a shifting standard of tangibility or concreteness as a *sine qua non* of taxability, but, to the credit of the Supreme Court of Louisiana, be it noted that such variations in the test of tangibility have always resulted in subjecting an ever-widening class of personal property to taxation. Whatever modification of views these decisions show, the general trend of such modification is in the direction of reaching wherever legally possible, that class of society which only pays its taxes at the point of a decree of a court of last resort.

Not losing sight then of the general tendency of Louisiana jurisprudence, let us investigate the decision of the Supreme Court of Louisiana in the case of the *Comptoir Nationale D'Escompte de Paris vs. Board of Assessors*, 52 Annual, 1315, above referred to and decided in 1900. A perusal of that case shows that it was considered with unusual care and fullness. The opinion was handed down by the Chief Justice of the Court, and the Comptoir Nationale D'Escompte de Paris was represented by the distinguished counsel who now appears in its behalf in this tribunal. Every ground urged for the nullity of the assessment was reviewed, and the case was considered from every aspect and every detail. Going a step further than it had ever done before, the Court held the Comptoir Nationale D'Escompte de Paris liable to taxation, relaxing its test of tangibility further than it had ever done by accepting non-

negotiable notes as sufficiently concrete evidences of indebtedness. But, as the decision shows, the Court did not rest its opinion upon the existence of these non-negotiable notes alone; it based its conclusion, likewise on the other facts stated by it; namely, that the Comptoir Nationale D'Escompte de Paris was pursuing a continuing business in the City of New Orleans through an agent with an office there; that it was regularly investing and reinvesting its monies through its agents in loans throughout the State, secured by collateral deposited with this agent and remaining with him; that such monies were not loaned in occasional, exceptional or isolated cases, but that, year in and year out, it pursued a well established permanent business conducted in an office rented for that purpose by the agent charged specially with such duties.

A comparison of the case with the present suit shows an absolute similarity; the parties are the same; the assessment is the same; the grounds of complaint against it are the same. The method of doing business varies but in one particular, for the money is obtained in the same way; it is loaned, through the same agent, to the same class of patrons, upon the same collateral, after the same written hypothecation, for the same consideration. The transaction begins in Louisiana, it ends there; all the papers in the case remain there. The only respect in which the facts of this case differ from the facts as found by the Supreme Court of Louisiana, is in the discontinuance of the practice of requiring promissory notes to be signed by borrowers, and in the substitution in lieu thereof of a system of bank checks drawn by the borrower on the Comptoir Nationale D'Escompte de Paris and of overdrafts by such borrowers on the Comptoir's books. We challenge the production of proof showing any other difference in the facts of the two cases.

Now then, still bearing in mind the ever-growing desire

of the Courts of Louisiana to tax personal property of non-residents wherever legally possible, and recalling the decision of the Louisiana Supreme Court in the Comptoir case in 1900, we make so bold as to ask your Honors to suppose the present record with its proof of the substitution of bank checks and over-drafts for the non-negotiable notes, to be under consideration by the Supreme Court of Louisiana. What do your Honors think would be the decision of that august tribunal? Can your Honors believe that, finding the facts of the two cases alike, except in the one particular noted above, the Supreme Court of Louisiana would tolerate this palpable effort to nullify its own decree? Face to face with such a bald, transparent attempt to render nugatory its own findings, would it look around for evidences of indebtedness in the shape of written promises to pay, and then discovering them vanished as a result of some legal prestidigitation, would it exempt from taxation the very same money at interest and credits it had taxed three years ago? We do not believe it. We say it is more consonant with the former action of the Court, with its high reputation for self-respect, justice and fair dealing, to assume that the Court would brush aside technicalities and, that leaving behind the baneful tradition of its Insurance decision, it would boldly take the position that no written evidences of money loaned or credits held in Louisiana and owned by non-residents, were necessary to subject such money or credits to taxation in that State under circumstances and conditions such as are disclosed in the present record.

We confidently believe that the Supreme Court of Louisiana would dismiss complainant's bill, and so believing, we say, with all respect, that this Court must hesitate long before it takes any other course, for, as was said by Mr. Justice Brewer in the *Stempel case*, 175 U. S. 316:

> "When the question is whether property is exempt from taxation and that exemption depends alone on a

> true construction of a statute of a State, the Federal Courts should be slow to declare an exemption in advance of any decision by the Courts of the State. The rule in such a case is that Federal Courts follow the construction placed upon the statute by the State Courts, and in advance of such construction they should not release any property within the State from its liability to State taxation unless it is obvious that the statutes of a State warrant such exemption, or unless the mandates of the Federal Constitution compel it."

A fortiori is this true when the highest Court of a State has maintained the liability to taxation of the very litigant invoking Federal jurisdicton under practically identical conditions.

We trust the Court will pardon us for pressing the argument a little further, on the same lines. Suppose the present record were before the Supreme Court of Louisiana and that tribunal were unwilling to maintain the assessment against complainant, a non-resident, for personal property unless it were proven that there were in that State tangible concrete evidence of the money loaned or credits due, would there be any difficulty in pointing to ample evidence of such indebtedness reduced or crystalized to the required degree of concreteness, abounding in the record? Mr. Breton's testimony shows that when a borrower now inaugurates a transaction or loan, instead of signing a written promise to pay, he draws his ordinary check on the Comptoir, which honors same by immediate cash payment or by handing to the borrower a draft on the Comptoir's London, Berlin, or Paris office, which draft is promptly converted into cash in the New Orleans or New York market. When asked the natural question, "What evidence have you that a borrower owes you anything?" Mr. Breton naively answered: "I have got a check from him; he is over-

drawn on my bank." And again to the interrogatory: "What sort of evidence did you take?" came the logical reply: "Well, they drew a check." (R., p. 28.) Is not the check evidence of the debt in written form? Is it not equivalent in tangibility to the non-negotiable notes that were formerly used? Wherein does it differ from the receipt for money loaned (R., p. 31) formerly required, and considered by the Supreme Court of Louisiana in fixing the liability of the Comptoir to taxation? The check shows beyond dispute, over the signature of the borrower, what sum of money has been lent.

We therefore undertake to say that the check accompanying every transaction, and admittedly held in Louisiana as proof thereof, would satisfy the requirement of the Supreme Court of Louisiana, if it still demanded tangible evidence of indebtedness as a basis for taxation of the complainant. Certainly it meets the test of the learned counsel for appellee, as appears by reference to an excerpt from his brief, reproduced by the Supreme Court of Louisiana in its opinion in the *Comptoir case*, 52 La. Annual, page 1330. We quote from that extract from counsel's brief in the former case:

> "As held in 15 Wallace, 323, the true test of tangibility of a credit held by a non-resident is 'does such credit, by general usage, acquire the character of and is it treated as property, and does it pass as money wherever it may be?' State and municipal bonds have this character and so *possibly checks upon solvent banks.*"

Further, in addition to executing such a check, the borrower makes a manual delivery of the collaterals which he deposits as security for his loan and which remain with the lender until the transaction is concluded. At the same time he signs a written instrument of pledge or hypothecation by

which he authorizes a sale of the collateral if he fail to keep up the necessary margin, and by which he likewise promises to pay any deficiency remaining due if these collaterals, when sold and applied to the payment of the debt, do not realize an amount sufficient to discharge same. The existence of this check and the delivery of the collateral, and the written pledge thereof, and the entry of the transaction on the Comptoir's book, all these would make it perfectly easy to recover judgment against a borrower in a court of law were parol evidence of the debt inadmissible and documentary proof alone receivable in evidence. Admitting then, for the sake of argument, that personal property owned by non-residents is taxable in Louisiana only when same assumes a concrete form, we submit that there is convincing proof in the present record showing that the Comptoir has in its possession in Louisiana written evidence of the indebtedness due it as the result of the business done by it in Louisiana.

We wish to impress upon the Court that complainant's business is a steady continuing business, that it has regularly invested and reinvested its monies in Louisiana, and that the proceeds of one loan, when collected, are promptly put into circulation in the shape of another loan. True, there is an effort made in the case to deny these facts and to prove that there is no continuity in the business, and that each transaction is a separate and independent one because the money therefor is obtained by the sale of exchange. But the Supreme Court of Louisiana disposed of this contention in the following words:

> "The evidence establishes that the plaintiff corporation is pursuing in the City of New Orleans a continuing business through an agency there; that it loans money upon collaterals of various kinds for which the borrower gives the company his non-negotiable promissory notes.

"These notes, received by the agent, are kept by him until maturity, when they are either taken up by payment in money by the debtor or through exhaustion of the collateral.

"The monies so received are reinvested in other loans.

"It is claimed that the plaintiff never sends its own monies into this State and there lends them, but that the monies loaned are obtained through foreign drafts or bills of exchange.

"We think the particular manner or instrumentality by which the monies used by plaintiff in the course of its continuing business in Louisiana is obtained is a matter of no moment or significance in the consideration of the question."

We do not think we could more fittingly conclude our discussion on this branch of the case than by quoting the following extract from the *Bluefields Banana Company case*, reported in 49 La. Annual, page 43:

"The foreign corporation had an agent here, where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent. Also for the prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and City governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way."

The assessment, therefore, conforms to the tests of taxability laid down by the Supreme Court of Louisiana and should be maintained by the Supreme Court of the United States

III.

Evasion of Taxation.

Sydney Smith, the great English wit, said, in 1820, that "there was nothing certain but death and taxes."

However true this epigram may have been in regard to death, and as to taxes when this great wit uttered it, in 1820, the progress of time has proved its utter falsity. The ingenuity of man has in the past three-quarters of a century devised so many devices, shifts and subterfuges to avoid taxation, that some wit, familiar with the subject, has declared that "tax dodging has become a fine art." This is especially true in regard to the evasion of taxes on personal property. This species of property, which in most instances is the best paying and most remunerative, and receives more protection from the government in the way of police protection, from theft, fire, mutilation, and the resort to the Courts, far beyond that afforded to real estate, and yet by devious devices, escapes to a larger degree its just proportion of taxes for the protection and security furnished by the State and municipalities. Indeed, Ex-President Harrison, in one of his lectures to a law school, said that personal property constituted two-thirds of the most valuable wealth of the Union, and yet paid less than one-third of the taxes, and declared that the paramount problem of government was for the law-making and judicial and executive branches to devise efficient means to thwart and circumvent these prevalent devices to avoid taxation on this character of property. No more patent and transparent evasion, in our opinion, has been invented and resorted to than the one involved in the present case, as we will proceed to show. The complainant herein is a foreign corporation doing an extensive business in New Orleans, in buying and selling exchange, and also in lending money. In a former case (52 La. An. 1323), to which the present cause is a sequel, it was

acknowledged that it did business to the amount of millions of dollars per annum. And in this case (Rec. p. 27) Breton, the former agent of the company, testified:

"Q.—Was it over a million dollars?
"A.—Taken altogether, yes.
"Q.—How much over a million?
"A.—I do not know.
"Q.—Was it over two millions?
"A.—No, sir."

It is probable that it loans more money than all the banks of New Orleans combined. In that case (52 A.) it contested a tax laid on its money loaned, for which it took promissory notes, contending that because it obtained this money to lend to its customers, by drawing bills of exchange, these notes could not be taxed. The Supreme Court of Louisiana negatived this contention, and sustained the tax. In that case the lower court had sustained the tax for 1898, which was the one in contest, rendering its decision on June 12th, 1899. The case was submitted, after argument in the Louisiana Supreme Court on March 8th, 1900, and decided on April 2nd, 1900.

The complainant changed its manner of doing business in 1900, and instead of taking promissory notes from the borrowers, took checks on the company, in lieu thereof. It was impossible to ascertain from the witness, Breton, exactly when this change was made. On p. 30 Record, he was asked:

"Q.—When did you cease to take these promissory notes?
"A.—In 1900.
"Q.—The first of the year, 1900?
"A.—Yes, sir."

And again on p. 31, "I cannot state the exact date, the first of 1900." Here is strong circumstantial evidence to show that this change was made to avoid taxation. The fact

that the witness declines to state the date when the change was made becomes a suspicious fact, for the following reasons. The decision in the lower court was rendered June 12th, 1899, and signed June 30, 1899. The case was submitted in the Supreme Court of Louisiana March 8, 1900, and decided on April 2, 1900. It therefore became important to know exactly when the change was made, in order to determine what the motive or intention was. It is obvious that the witness could have, if he had so desired, ascertained and given the exact date when the change was made. It is plain that it was made after the decision in the lower court was rendered and signed, and probably after the decision in the Supreme Court of Louisiana, on April 2nd, 1900. Another important fact is that under Sec. 26, Act No. 170 of 1898 of the General Assembly of Louisiana, p. 360, it is provided:

> "That all taxpayers in the parish of Orleans shall have the right to appear before a standing committee on assessments of the city council of New Orleans between the 21st day of March and the 10th day of April, inclusive, of the year in which the assessments are made * * * during the sessions of said board and be heard concerning the descriptions of the property listed and the valuation of the same as assessed."

In paragraph (7) seven of complainant's bill (Rec. p. 3) it is claimed that such application was made "between the 21st day of March and the 10th day of April of the year 1901, being the year in which the said illegal assessment was made." And it is added in the same article "that said committee declined to hear your orator and it was deprived of the hearing provided by law and demanded by it and that said illegal assessment was allowed to remain." In respondent's answer under Article 7th (Rec. p. 13) the truth of the fact of the application for cancellation having been made was admitted, but the answer proceeded to "deny

all other allegations therein contained, and especially and particularly deny that complainant was in any way deprived of any hearing provided by law, or that it was refused the same." The record discloses nowhere any proof of the denial or refusal, and as a matter of fact it is not true. *Non constat,* but what if an application for a hearing had been made, it would have been granted, and complainant would have been obliged to produce his books and papers in order to show when this change was made.

It is true that on p. 31 of the Record the witness testified:

> "Q.—Was this change in your business made in pursuance to the decision of the ——?
>
> "A.—No, sir; as I told you before, it was on account of the demand made by clients asking to do what all the local institutions did."

It will be seen that the witness was so swift that he did not wait to have the question completed as to what decision, or of what court, he was being interrogated about. On page 20 of the Record he says: "We did not receive promissory notes or bills receivable because our clients preferred and insisted to be simply overdrawn," and this subterfuge is repeated several times in the witness' testimony. Complainant produces no witness, nor does he name a single client who preferred and insisted on giving checks instead of notes, which he could easily have done if his testimony could be corroborated. Again, he says that his clients asked the change, that is "to do what all the local banks are doing" (Rec. p. 31). There was no corroborative proof of this bald assertion, when many witnesses could have been summoned to corroborate and prove it, if it were true. Mr. Fulton, President of the Commercial Bank, a witness for respondent (Rec. p. 35), testifies that checks are received for exchange loans, and exchange advances. Mr.

Green of the Whitney Bank, a witness for respondent, testifies (Rec. p. 36):

> "For all advances on exchange we invariably take a receipt as an evidence of indebtedness; they attach the collaterals to this receipt, for advances against exchange, which shows the exact amount we advance against them.
>
> "Q.—You have no other evidence of indebtedness?
>
> "A.—No, sir; the receipt takes the place of it.
>
> "Q.—Do you know what is the custom in the other banks in the City of New Orleans?
>
> "A.—As far as I know they follow the same rule."

And he relates his similar practice with V. & A. Meyer and Julius Weiss & Son, large dealers in foreign exchange. His testimony was introduced by respondents to contradict the witness, Breton, on this point, *even as to foreign exchange*. But in the case at bar we are not dealing with foreign exchange, but with cash actually loaned, the cash being realized by the complainant on its own bills of exchange, and the cash thus realized loaned to the borrower, an entirely different transaction from a customer offering exchange to a bank. On page 29 of Record, Breton says:

> "Q.—The sum and substance, I understand, of the exchange business is that whatever money you loaned out in whatever form it might be, was raised by exchange?
>
> "A.—Yes, sir." And on page 31: "I do not credit him.'
>
> "Q.—You pay him?
>
> "A.—Yes, I pay him the money."

And on page 26:

> "Q.—When in answer to the fifth interrogatory you say the money was obtained by drawing foreign exchange on Europe, you mean to say that the cash which you lent in the City of New Orleans was obtained by

drawing this foreign exchange on Europe and getting it cashed here in the banks?

"A.—Getting it in New York.

"Q.—And the cash was forwarded to you from New York?

"A.—Yes, sir?"

So that the only way in which foreign exchange figures in this matter is that the complainant gets the money which he loans out in cash in New Orleans, by getting the cash which he gives the borrower which has been obtained by drawing complainant's own exchange bills on Europe or New York. This constant introduction in the testimony of its dealing in foreign exchange, is a mere subterfuge to confuse the mind of the Court, under the pretense that the complainant's business is entirely in foreign exchange. This was the old subterfuge unsuccessfully attempted in 52 La. Annual, p. 1330, and which the Supreme Court of Louisiana rejected, saying:

> "We think the particular manner or instrumentality by which the money used by plaintiffs in the course of its continuing business in Louisiana is a matter of no moment, or significance in the consideration of the question which we are now dealing with. It beyond question loaned moneys in Louisiana, which for the purposes of the loans, were the company's moneys, and the borrowers give the company their own non-negotiable promissory notes to represent money received from the company."

We thus have the following circumstances to show that the change was an attempted evasion of taxation: 1st, the refusal of the witness to state the exact time when the change was made, altho' it was in his power so to state; 2nd, the decisions of the Louisiana State Courts as an incentive to the change; 3rd, his excuse of his client's demands for the change, uncorroborated by a single witness,

when he could have easily produced witnesses to corroborate his statements, if it were true; 4th, his effort to confuse the tax on the loan with a tax on foreign exchange. Against these four cogent and strong circumstances there stands only the simple, unsupported testimony of the witness that the change was not made to avoid taxation. We submit that the witness' denial cannot prevail against all the circumstances developed in this case. Neither law nor equity will allow it to prevail, as we proceed to show by the following text writers and other authorities:

Having thus shown that the strong circumstantial evidence in this cause establishes that the change on the part of this company in taking checks instead of promissory notes was done in order to avoid and evade taxation, the next question which presents itself is, is this change such a device as will not be recognized and given effect to, by the courts?

Cooley on Taxation (p. 415, 2nd edit.) lays down the doctrine in such cases in the following words:

> "Shifts to Evade Taxation.—The Federal revenue laws abound in provisions for circumventing and punishing frauds upon the revenue, and State legislation is not without enactments of similar nature. But it is not uncommon to encounter in the administration of tax laws shifts and devices, not amounting to legal fraud, but which nevertheless have in view the same purpose, to avoid a just share in the burdens of taxation. Sometimes, but not always, it is possible to defeat such attempts when the facts are known."

And cites authorities to show that courts will examine into the facts of each case and will not lend their aid to these frauds on the revenue. On p. 433 the author says, in note 3:

> "It is a principle of the common law that all contracts and arrangements made for the defeat or evasion

of the revenue laws of a country are illegal, and the courts will give the parties no remedy in respect to them."

Welty on Assessments (p. 317, Sec. 174) also says:

"But where a party converts money or property into U. S. bonds or treasury notes, to evade taxation and not as an investment, it will be regarded as a fraud against the revenue laws of the State, and he will be subject to taxation to the same extent as if such device had not been attempted;" and on page 320, same section, the author says: "It is only when the property exchanged is withdrawn from taxation, or sought to be, by a pretext or a device, that the transaction becomes a fraud against the State revenue laws, and for taxable purposes is disregarded."

Greenhood, on Public Policy, under Rule CLIX (pp. 152-153) lays down the doctrine: "Any contract which has for its object the practice of deception upon the public or public officers * * * or which is made in order to consummate a fraud upon the people, or the public treasury, or upon third persons, is void;" and under Rule LXIX (p. 48) he says: "But no executed contract which is made for the purpose of accomplishing something opposed to public policy" is valid; and on p. 53, under illustrations of the rule No. XXIII, he cites and endorses the decision which held that "A assigned a mortgage held by him to evade the taxation laws of the State. He afterwards brought a bill to annul the assignment. His bill was dismissed."

12 Eng. and Am. Encyc. of Law (2nd edit.):

"Investment in Government Bonds, etc., to Escape Taxation.—United States bonds or other securities or treasury notes which are legitimately held as an investment, remain exempt, though one purpose in securing them was to escape taxation to the extent of such investment. But exemption cannot be successfully

> claimed by a person whose investment in such securities or legal tender notes has been colorable and temporary, and merely to avoid holding taxable property at the time when the assessment was made."

The text of all these eminent authors and commentators is abundantly sustained and supported in the following cases by this Honorable Court:

In 9 Kansas, p. 235 (*Mitchell vs. Commissioners*): A party had a deposit of current funds in a bank, and on Feb. 28 drew it out in legal tender notes, and made a special deposit of the legal tender notes in the same bank and three days afterwards changed his special deposit of the legal tender notes into a general deposit of current funds, and sought to escape assessment and taxation on the amount of the special deposit, because on March 1st, the day the assessment was made, the deposit was in non-taxable legal tender notes, it was held that "the whole transaction is for the special and express purpose of escaping taxation on such deposit; *held* that, as to the government, the transaction was void, and the actor not entitled to the intervention of the courts to be relieved from the taxes imposed on such deposits." (Syllabus).

The Court said on p. 238:

> "It is also conceded that the transaction between plaintiff in error is not in contravention of law, of itself. But it is contended that the motive, being to defraud the government of its just dues, and enable the plaintiff to escape the just burdens that society imposes upon him, enters into and vitiates the whole transaction, and that a Court of Justice, sitting as a Court of Equity, will not lend its aid for the accomplishment of any such purpose, and we think the argument is a good one. * * * The judgment is affirmed." (All the Justices concurring.)

This case was carried to this Honorable Court on writ

of error (91 U. S. 208, 1 Otto) and this Honorable Court affirmed the decision and judgment of the Kansas Supreme Court in these few words:

> "Mr. Chief Justice Waite delivered the opinion of the Court. We think the *decision in this case* was correct. United States notes are exempt from taxation by or under State or municipal authority; but a court of equity will not knowingly use its extraordinary powers to promote any such scheme as this plaintiff devised to escape his proportionate share of the burdens of taxation. His remedy, if he has any, is in a court of law."

In 45 Ohio St. 632 (*Shotwell vs. Moore*), wherein currency was converted into United States notes, "on the day preceding the second Monday in April in said respective years" (1881, 1882, 1883, 1884, 1885), the second Monday of April being the beginning of the assessment for each year, the Court held that the conversion was for the purpose of avoiding taxation, and that the United States notes were liable for the tax, under the assessment. This case was also brought to this Honorable Court by a writ of error.

This Honorable Court affirmed the decision of the Ohio Supreme Court in 129 U. S., 590 (*Shotwell vs. Moore*), and on p. 597 said, after citing authorities: "All these decisions show that the courts look upon this transaction as indefensible, and consider it an improper evasion of the duty of the citizen to pay his share of the taxes necessary to support the government," and sustained the decision of the Court *a quo*, that the attempted evasion would not exempt the property from taxation.

This doctrine has been uniformly sustained by the Supreme Courts of the States of the American Union, whenever the issue has been presented, as will be seen by a careful reading of the following cases: *Jones vs. Seward*, 4 N. W., 946, 10 Nebraska, 122; *Dixon County vs. Halstead*, 23

Neb., 697, 37 N. W., 621; *Drexler vs. Tyrrell*, 15 Nev. 115; *Holly Springs Sav. & Ins. Co. vs. Supervisors of Marshall County*, 52 Miss., 281 (24 Am. Rep., 668); *Sheldon et als. vs. Pruessner*, 22 Lawyers' Annot., Rep. 709 (Kansas); *Ogden vs. Walker*, 59 Ind., 460; *Poppleton vs. Yamhill Co.*, 8 Oregon, 340; *Walker vs. Jaeger et al.*, 39 Iowa, 2208; *Bellinger vs. White*, 5 Neb., 401; *Shotwell vs. Moore*, 45 O. St. 632; *Mitchell vs. Commissioners*, 9 Kansas, 235.

But it may be said that in most of these cases, as well as in the Honorable United States Supreme Court cases, the decisions were based on the fact that current funds were changed into United States legal tenders, or United States bonds, just before the time of assessment, and then immediately reconverted into current funds after the assessment was made. It may be argued that the courts uniformly conceded that a person or corporation in order to evade taxation, might convert funds into non-taxable United States securities, as a *permanent* and *bona fide* investment, and yet the United States bonds or notes would not be assessable and taxable and the courts held to the taxability only when the reconversion into taxable funds followed immediately after the assessment. This is true in regard to the cases in 9 Kansas, 235; 91 U. S., 208; 45 O. St., 632; 129 U. S. 590; 52 Miss. 281; 10 Neb. 158; 23 Neb. 697; 59 Ind. 460; in all of which the reconversion from United States securities into current funds, immediately after the completion of the assessment, was held to be conclusive evidence that the change had been only a temporary shift or device to avoid and evade taxation, and as such void. It would have been otherwise if the change were an honest, *bona fide*, permanent investment in non-taxable securities. Our opponent may argue, therefore, that the principle sustained in these cases is not applicable or pertinent to the case at bar, for the reason that the change from promissory notes for the loans,

here, to checks is not *temporary*, but *permanent*. This difference, however, does not in any way militate against the application of the principle to the circumstances of the present case, as will be shown by the following cases:

In 22 Lawyers' Annot. Reps., 709 (*Sheldon et als. vs. Pruessner*) it was decided by the Kansas Supreme Court that:

> "1. The Courts in due administration of justice will not enforce a contract in violation of law, or permit a plaintiff to recover upon a transaction against public policy, even if the invalidity of the contract or transaction be not specially pleaded. 2. Where a mortgagee, residing in this State, owns and has in his possession a note for $1,700 secured by a mortgage upon real estate in this State, and pretends to transfer by merely endorsing his name thereon, but without actually delivering the same, such note and mortgage to his father in another State, without any demand being made upon him to do so, to secure $450 and interest for prior borrowed money, *but really for the purpose of evading the payment of taxes justly due the State. Held* that in an action brought in the name of the father to recover upon the note and mortgage, the mortgagee, *on account of his acts in evading the payment of taxes, and thereby defrauding the revenue of the State,* cannot have any recovery in the name of his father or otherwise on any part of the note or mortgage belonging to him. *Held* also, that if the father did not have any knowledge of such transfer, and his name is used to collect such note and mortgage without his consent, or if he merely accepted the note and mortgage as *particeps criminis, to defraud the revenue laws, no recovery of any amount thereon can be had in his name.*" Syllabus. (The italics are our own.)

The Court said (p. 712), citing 1 Sharswood Blackstone, 7 Kan., 210; 37 Cent. L. J., 313; 15 Cal., 389; 14 Kan., 580; 19 Am. Rep., 107; 14 Nev., 175; 33 Am. Rep., 548; 15 Nev. 114:

"As before stated, if the note and mortgage had been transferred in good faith as a gift, sale, or as collateral security, without any wrongful intent or purpose on the part of Henry to defraud the revenue of the State, the whole amount might be recovered by any owner or holder of the same."

So in 39 Iowa, 228, (*Waller vs. Jaeger et al.*):

"Where the purchaser of real estate executed a lease to the vendor, stipulating that at any time within five years the latter should have the privilege to purchase, and that meanwhile he should pay all the taxes upon the leased property; *Held* that the transaction did not constitute a sale, and the intention of the vendee was to make a loan in such a manner as to avoid the payment of taxes. The city council properly assessed the real estate to the vendor, and the consideration of the alleged sale to the vendee as money and credits." (Syllabus.)

The Supreme Court of Iowa said (p. 234):

"Yet we feel constrained to hold that the circumstances of this case justified the committee of the council in the conclusion that the consideration named in the several conveyances to plaintiff was a mere loan to the respective parties named, and *that the form of the transaction was adopted merely to exempt the amount of the loan from liability for taxes. The plaintiff had money to loan. He was anxious to avoid the payment of taxes.*"

We italicize the clauses which fit the present case at bar.

8 Oregon, 338 (*Poppleton vs. Yamhill Co.*) decided that:

"If a taxpayer, having a large amount of notes and mortgages, in order to escape the payment of taxes on the same, borrows a sum of money of a person residing out of the county, and deposits with his creditor such notes and mortgages, for the purpose of avoiding

the payment of taxes on the same; and such deposit or transfer is a fraud on the revenue of the county." (Syllabus.)

The Court based its decision (p. 340) on the question as to whether the transaction was intended to avoid and evade taxation on the following circumstances:

> "1. The security was greatly disproportioned to the amount of money borrowed, which may have been taken as a circumstance by the board. * * * 2. The evidence shows that Poppleton continued to loan money in large sums, after the giving of this note of a thousand dollars, and shows that he was in circumstances to pay this note, which shows that it was not necessity which compelled him to deposit this large amount of notes as security for a thousand dollars. This tends to show that so large a deposit was not necessary to secure this loan. 3. The evidence shows that one of the large notes deposited by him as collateral, that is the note of L. A. Smith *et al.* for two thousand two hundred dollars, was taken by him from the bank and eight hundred dollars collected on it. This is evidence tending to show that he had control of these notes, and from these facts the board may have come to the conclusion that the transfer to De Lashnutt and Oatman was not in good faith, and to avoid the payment of taxes on this large amount of property."

Thus with no direct positive nor affirmative proof, before it, showing the intention of plaintiff to avoid or evade taxation, the Supreme Court of Oregon concluded, from the circumstances alone accompanying the transaction, that there was the intention to avoid and evade taxation, and defraud the revenue, altho' the shift adopted here was a permanent one and not merely temporary.

In 15 Nev., 115 (*Drexler vs. Tyrrell*):

> "Upon a review of the testimony, *Held* sufficient to show that the mortgage sought by plaintiff to be fore-

closed, was at the request of the mortgagee, executed to a citizen of California for the sole purpose of preventing an assessment and of evading the payment of taxes, in the State of Nevada upon the money at interest secured thereby. * * * It is the policy of the revenue laws that all property within the State, except such as in terms exempted shall be taxed; and any mortgage or contract entered into for the sole purpose of placing property, otherwise taxable, beyond the operatino of the revenue law, is oposed to that policy, and therefore illegal." Syllabus).

The Supreme Court of Nevada said:

"It must follow, that any contract, arrangement, or device, entered into for the sole purpose of placing property, otherwise taxable, beyond the operation of the revenue law, is directly oposed to the only policy of that law. And if there is one statute more than another of the policy of which Courts should not countenance an evasion, that one is the revenue law." (Syllabus.)

And here also the shift adopted was permanent and not merely temporary.

On page 120, Drexler, the plaintiff, testified that the making of the mortgage to Lathan, instead of to himself (Drexler) was not so done to avoid taxation, saying, "It was not to avoid any taxes," and the trial Court so found, "and that said note was not made in the name of James H. Lathan for the purpose of defeating taxation by the State of Nevada, or of defrauding the revenue of the State, or for the purpose of defrauding the revenue of the State out of any tax due or to become due upon the mortgage securing the same" (p. 119), and on p. 122 the trial judge said: "Mr. Drexler cannot be supposed to have intended to defraud the government." And yet the Supreme Court of Nevada, looking at all the circumstances of the case, decided (p. 123): "In our opinion, the testimony of the plaintiff, as well as defend-

ants, shows conclusively that the mortgage was executed to Lathan solely for the purpose of evading the payment of taxes upon the money at interest secured therby, and that such purpose was fully accomplished," thus negativing the testimony of the plaintiff when he testified, "It was not to avoid taxes."

In 5 Nebraska, 401, *Bellinger vs. White,* a case in which the plaintiff attempted to avoid taxation on a homestead entry, by refraining from perfecting his title, the Court said:

> "He who seeks the interposition of a Court of Equity to restrain the collection of a tax on his real estate on account of its alleged illegality, must bring himself clearly within some recognized rule of equity jurisdiction; and he cannot be permitted to allege his own failure to perfect his title in a case like this, as a ground on which to base a claim for relief."

Besides these decisions, there is another by the Supreme Court of one of the Western States, in which it was held that a change from a security by mortgage, which was taxable under the statute of the State, to a sale with an equity of redemption, which was not taxable under the Revenue Statute *eo nomine,* was an attempt to evade taxation, and a fraud on the revenue of the State, which would not be sustained by the Courts. The memorandum or note of this last decision, we have mislaid or lost, and cannot therefore cite it at the time of writing this brief, but if found hereafter, we will furnish it in print to this Honorable Court. All these cases last cited, and quoted from, strongly support our position that where the change is made, not for *temporary* purposes, but as a *permanent* one, the Court will not sustain it, where the circumstances show, as in the case at bar, that the change is effected or adopted in order to avoid taxation, and defraud the revenue, by any such device or shift.

In 10 Neb., 158 (*Jones vs. Seward Co.*), already cited, the plaintiff purchased through a bank in New York, government bonds which with the premium amounted to $4,650, on February 29th, 1876. The bonds were sold on the seventh of March of that year, and it was held "a mere device to escape taxation, and that the money was taxable." It was "further argued" on behalf of the plaintiff (p. 155) "that the purchase of the bonds was in the ordinary course of business and not to evade taxation, referring to the evidence, particularly to the ledger, showing purchase of bonds other than those in question, in 1873 and 1876." In passing upon the question of fraud on the revenue and the evidence thereof, the Supreme Court of Nebraska said (p. 158):

> "But it is said fraud is never presumed, but must be proved. This is true. But in what manner is it to be proved? Judge Story says, 'Fraud, indeed in the sense of a Court of Equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an unconscientious advantage is taken of another.' Story's Eq. Juris., Sec. 187. And in speaking of the proof it is said, 'on the other hand, neither of these Courts insists upon positive and express proof of fraud; but each deduces them from circumstances affording strong presumptions.' *Id.* Sec. 190. In but few instances, comparatively, can fraudulent intent be shown by direct testimony, and therefore it is generally established by circumstantial evidence. In our opinion the testimony establishes the fact that the bonds in question were purchased by the plaintiff, not with the design of making a permanent investment, but for the sole purpose of avoiding taxation. If we go back to the cases already cited, we will see that these principles were applied in all those cases."

So in 9 Kansas, 235 (affirmed by U. S. Sup. Court in 91 U. S., 206), it was held that all the circumstances of the

case showed that "the whole transaction was for the sole and express purpose of escaping taxation on the funds so used in 1870" (p. 238), and this conclusion was sustained by the Supreme Court of Kansas, although the opinion seems to disclose no positive or direct proof that the object was to avoid or evade taxation.

In 15 Nev., 115 (*Drexler vs. Tyrrell*) the plaintiff executed a mortgage to a person resident in California. The plaintiff testified on p. 120 "it was not to avoid any taxes," and yet the Supreme Court of Nevada decided from all the circumstances of the case that there had been an attempt to avoid taxation.

In 23 Neb., 700 (*Dixon Co. vs. Halstead*) there was no proof that the U. S. bonds were purchased a month before the assessment for the purpose of evading taxation, but held that if it had been so proved, "any evasion of that kind to escape his just proportion of the taxes imposed by law, should be frowned upon by the Courts, and a party not permitted to shelter himself behind such temporary change in the character of his funds."

In 8 Oregon (*Poppleton vs. Yamhill Co.*), the plaintiff deposits with his creditor an amount of notes and mortgages to the amount of $12,209.25, to secure a note of $1,000, and denied that it was done to avoid or evade taxation. The Supreme Court of Oregon decided that it was an attempt to avoid taxation because:

> "1st. The security was greatly disproportioned to the amount of money borrowed. * * * 2. The evidence shows that Poppleton continued to loan money in large sums, after the giving of this note of a thousand dollars, and shows that he was in circumstances to pay this note. * * * 3. The evidence shows that one of the large notes deposited by him as collateral, that is, the note of L. A. Smith *et al.* for two thousand two hundred dollars, was taken by him from the bank

and eight hundred dollars collected on it. This is evidence tending to show that he had control of these notes."

In 39 Iowa, 229 (*Waller vs. Jaeger*) a "purchaser of real estate executed a lease to the vendor, stipulating that at any time within five years the latter should have the privilege of repurchase, and that meanwhile he should pay all the taxes upon the leased property, *Held* that the transaction did not constitute a sale, and that the intention of the whole vendee was to make a loan in such a manner as to avoid the payment of taxes." The Court (p. 234) decided that:

> "The form of the transaction was adopted merely to exempt the amount of the loan from liability for taxes. All the circumstances of the case are consistent with this conclusion. The plaintiff had money to loan. He was anxious to avoid the payment of taxes. * * * But the strongest circumstance, perhaps of all, is the fact that when plaintiff went before the committee of the council in support of his petition to be discharged from this assessment, he contented himself with merely detailing the fact and circumstances connected with the execution of the deeds and leases, and did not claim that there was a *bona fide* sale, nor that the transaction was a mere loan."

In the case at bar, as we have already noted, the complainant in the case at bar, never applied for a hearing before the reviewers, and altho' it pleaded that it had been refused a hearing, which was denied by respondent, it produced not a syllable of proof to support the allegation of refusal.

We have already herein alluded to the fact that complainant utterly failed to produce any corroborative evidence at all to substantiate the statement of its witness Breton that first, the change from promissory notes to checks was made as alleged by its witness early in 1900; second, that the change was made at the earnest solicitation of its

clients, the borrowers; and third, that the change was made so as to conform to the practice of the banks in loaning money. Upon the first point, a mere reference to the books of complainant would have refreshed his memory as to the exact date when the new form of doing business went into operation. Upon the second point it was in its power to produce some of the witnesses to establish the fact that they as borrowers earnestly insisted on giving checks instead of promissory notes, or at least to have given the names of some of the borrowers, who could have been summoned by respondent to test the truth of Breton's assertion. Upon the third point it was entirely within the power of complainant to have summoned officers of banks and by their testimony to have proved that the banks employed the same method of taking checks of the borrowers, instead of promissory notes, for loans made by the banks, or at least to have mentioned the names of some of the banks so doing, in order that respondent might have summoned the officers of the banks named, in order to test the truth and accuracy of the witness' statement. None of these important and necessary things did complaiannt do. Its failure so to do, under the well recognized law of evidence, raises the presumption that if this corroborative and cumulative proof had been attempted, it would have contradicted, and not confirmed the testimony of the witness on these points.

> "From the failure of a party to produce evidence within his control, and which it is his duty to produce, a presumption or inference arises that if the evidence were produced it would be unfavorable to him, and this has been applied equally in criminal as in civil cases." 22 Am. and Eng. Encyc. of Law, (new), p. 1257, and authorities in notes 3 and 4, especially those of Federal cases.
>
> "And it may be presumed that if more satisfactory

evidence had been given, it would have been detrimental to the party who fails to produce it, and would have laid open deficiencies and objections which the most obscure and uncertain testimony was intended to conceal." *Ibid* 1258, and authorities in note 7, among which are *Clifton vs. Howard* (U. S). 41 How. 242; *The Silver Moon Husk* (U. S.).

So in 23 Neb., 698, *Dixon Co. vs. Halstead*, it was "Held, that if the change in the character of the funds was merely temporary—the object being to escape taxation—that such assets would be liable to be taxed, and that the question of the *bona fides* of the transaction was one of fact for the jury to determine." *Jones vs. Seward Co.*, 5 Neb., 561.

262, 22 Fed. cases No. 12,856. See also *Kirby vs. Talmadge*, 160 U. S., 379; *Pac. Coast S. S. Co. vs. Bancroft Whitney Co.*, 94 F., 180; 36 C. C. A., 135; 54 F., 481; 4 C. C. A., 458; *Same vs. Siefred, Id.; Same vs. Matthews*, 54 F., 486, 4 C. C. A., 459; *Same vs. Conley.*

This principle applies with peculiar force to cases of fraud, as in the case at bar, where strong circumstantial evidence establishes a fraud upon the revenue, and throws the *onus probandi* on the complainant to establish his contention. Another potent reason is fatal to complainant's contention. Strong circumstantial evidence, as in this case, will overcome even the positive evidence of *several* witnesses. *U. S. vs. Pacific Exp. Co.*, 15 F., 867; *U. S. vs. Searcy*, 26 F., 435. In the case at bar the strong circumstantial evidence should certainly overcome the meagre, and indecisive testimony of a single witness.

There is a rule in equity, also, which applies to this cause.

"An answer in equity so far as it is responsive to the bill, is to be taken as evidence in the suit, and to overcome it the complainant must prove his allegations by two witnesses, or by one witness supported by cor-

roborating circumstances." 7 Am. and Eng. Encyc. of Law (new) p. 868.

"The rule in equity is that the responsive denial of an answer must be overcome by two witnesses or by evidence equivalent thereto; and the overwhelming weight of authority is that this equivalent evidence must be one witness and corroborating circumstances." 1 Enc. of Pl. and Prac., 932, and authorities in note 3 (p. 932) and note 1 (p. 933) and a multitude of Federal decisions in support of the text (p. 935).

In conclusion we submit that we have abundantly established:

1. That the taxation herein involved is not repugnant to the Constitution of the United States;

2. Nor to the Constitution and jurisprudence of the State of Louisiana;

3. That complainant's action is a mere shift to evade taxation, and that the decision and judgment of the lower Court should be reversed and the assessment sustained, with the ten per cent. attorney's fees allowed under Sec. 56 of Act 170 of the General Assembly of Louisiana, pp. 373, 374. On page 15 of Record, respondent tax collector in answer herein, "prays that there be awarded to the attorney of the State Tax Collector ten (10) per cent. on the aggregate amount of the tax and penalties herein involved, or so much thereof as may be decreed by this Honorable Court to be maintained." This is prayed for under Section 56, paragraph 2 of Revenue Act No. 170 of 1898, of the General Assembly of the State of Louisiana, pp. 373 and 374, which reads as follows:

"That the attorney at law who represents the tax collector, or tax collectors, in all proceedings for the reduction of assessments and collection of taxes (license taxes excepted) and in all injunction proceedings wherein the tax collector or tax collectors are sought to

be restrained from the collection of taxes, shall receive a compensation of ten per cent. on the amount collected, calculating same upon the aggregate amounts of taxes and penalties so collected as the result of aforesaid proceedings. The aforesaid commission to the attorney at law shall be paid by the party against whom the judgment is rendered in whole or in part, and shall be collected by the tax collector as cost at the same time that the taxes and other penalties are collected."

Respondent would therefore ask that in case this Honorable Court should reverse the decision of the lower Court, that this Honorable Court would in its decree award the ten (10) per cent. as prayed for. All of which is respectfully submitted.

H. G. DUPRE,

E. K. SKINNER,

F. C. ZACHARIE,

Solicitors for Respondents and Appellants.

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Supreme Court of the United States.

OCTOBER TERM, 1903.

Office Supreme Court U. S.
FILED
NOV 9 1903
JAMES H. McKENNEY,
Clerk.

No. 157.

STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS,

THE CITY OF NEW ORLEANS ET ALS., APPELANTS.

versus

THE COMPTOIR NATIONALE D'ESCOMPTE DE PARIS, APPELLEE.

To the Honorable the Supreme Court of the United States:

Now come the State Board of Assessors of the Parish of Orleans, the State Tax Collector of the First District of the Parish of Orleans, the City of New Orleans, and the Treasurer of the City of New Orleans, appellants in the above entitled and numbered cause, through their undersigned solicitors, and show to the Court that they desire permission to file a supplemental brief, so as to discuss more fully the issues in said cause.

Wherefore, they pray that this Honorable Court may be pleased to grant them permission to file a supplemental brief in this cause, and that they be granted a delay of seven days from the allowance of this motion within which to file such brief.

Respectfully submitted,

F. C. ZACHARIE,

H. G. DUPRE,

Solicitors for Appellants.

(18,732.)

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASESSORS OF THE PARISH OF ORLEANS,

THE CITY OF NEW ORLEANS ET ALS., *APPELLANTS*,

versus

THE COMPTOIR NATIONALE D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

SUPPLEMENTAL BRIEF OF RESPONDENTS AND APPELLANTS.

As our opponent, counsel for complainants and appellees, in his oral argument, touched upon some points to which we were unable to fully reply in the limited time allowed for our closing, we find it necessary to submit the following supplemental brief in answer to those points.

To facilitate your honors by convenient reference to the

decision of the Louisiana Supreme Court, in 52 An., we premise by printing herein the following full

OPINION OF THE LOUISIANA SUPREME COURT.

SUPREME COURT OF LOUISIANA.

No. 13,310.

52 An. p. 1319, et seq. May, 1900.

SYLLABUS.

Non-negotiable notes representing loans in Louisiana, made by the agent of a corporation doing business therein, when kept within the State by the agent, may be subjected to taxation by the law of the State in which they are held City of New Orleans vs. Stempel. (175 U. S. Reports, 309.) Bluefields Banana Company vs. Board of Assessors, 49th An., 43.

Appeal from the Civil District Court, Parish of Orleans. —*St. Paul, J.*

Harry H. Hall for plaintiff, Appellant.

James J. McLoughlin, Assistant City Attorney, and *Samuel L. Gilmore,* City Attorney, for the City of New Orleans, Defendant, Appellee.

Francis C. Zacharie for the Tax Collector and Board of Assessors, Defendant, Appellees.

Edwin T. Merrick, on Petition for Rehearing, *amicus curiae.*

The opinion of the court was delivered by

NICHOLLS, C. J. The plaintiff is declared in its petition to be a corporation duly organized under the laws of the Republic of France, a citizen thereof, and therein domiciled in the City of Paris, and represented in the suit by its agent, Albert Breton.

Its allegations are that during the year 1897, petitioner, from its said domicile in Paris, through its said agent, transacted in the City of New Orleans a brokerage business, paying thereon a due and proper license tax.

That on the assessment rolls of the First Municipal District, Third Representative, Fifth Assessment District, Square No. 227, it was assessed for the year 1898, as follows:

"Moneys" loaned on interest, all credits, etc..	$50,000.00
Money in possesion.....	50,000.00

That all "credits" for "moneys loaned on interest" are taxable at its domicile in Paris, where it pays its taxes, and not at the domicile of its debtors in the City of New Orleans, and that, therefore, said item *"money" loned on interest, all credits, etc.,* was, and remains, an illegal assessment.

That its moneys in possession did not, during the year 1897, exceed, on an average, more than $20,000.00, nor did it exceed that amount at the time for making the assessment in 1898.

That it made due and timely application to the Board of Assessors for the Parish of Orleans, and later to the Committee on the Revision of Assessments for the Common Council, to cancel, from the said assessment rolls of 1898, the assessment of *"money loaned on interest, all credits, etc., $50,000.00," and to reduce* the assessment made against it of "money in possession" from $50,000.00 to $20,000.00, and its applications to cancel and reduce said assessments were, without just cause, rejected.

Petitioner annexes copies of said applications.

Its prayer is that the Board of Assessors, by its president; the State of Louisiana, by its Tax Collector, and the City of New Orleans, by the Mayor, be cited to appear and answer this petition, and that, after due proceedings had, petitioner have judgment in its favor, ordering the cancellation from the assessment rolls for 1898, of the assessment against it for "money loaned on interest, all credits, etc., $50,000.00" (fifty thousand dollads), and reducing the assessment against it of "money in possession, $50,000.00, to $20,000.00 (twenty thousand dollars), and for costs, and all general relief.

The defendant answered by a general denial.

The District Court rendered judgment partly in favor of

the plaintiff, the Comptoir Nationale D'Escompte de Paris, and partly against it, as follows:

"It is ordered, adjudged and decreed that there be judgment in favor of the plaintiff, the Comptoir Nationale D'Escompte de Paris, and against the defendants, the State Tax Collector for the Upper or First District of New Orleans, the Board of Assessors for the Parish of Orleans, and the City of New Orleans, ordering and decreeing that the assessment for the year 1898, against plaintiff on 'money in possession,' be reduced from fifty thousand dollars to twenty thousand dollars, and that as to the item 'money loaned on interest, all credits, etc., fifty thousand dollars,' the demand of plaintiff be rejected.

"It is further ordered and decreed that the ten per cent. attorney's fees allowed by law upon the State tax on said amount of 'money loaned at interest, all credits, etc.,' be taxed against the plaintiff, and that all costs of this suit be paid by defendants."

Plaintiff appealed.

Alfred Breton, agent of the plaintiffs in Louisiana, being upon the stand as a witness, testified substantially as follows:

The plaintiff is a French corporation domiciled in Paris. Its business in Louisiana through witness' agency was brokerage in money, stocks and bonds. It has no capital in Louisiana. If the company loans money on the agricultural products of the State, it receives for the money which it loaned, what are called exchange notes, of which the following marked "C 2" are the regular forms:

$..... ....., 189..

..... promise to pay to Comptoir Nationale D'Escompte de Paris.....for value received with interest at the rate of.....per cent. per annum until paid.

This note is not negotiable and is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment.....or should the drawer hereof when called on, refuse or fail to keep the margin hereon good, the Comptroller National D'Escompte de Paris is authorized to sell the said securities at public or private sale, with-

out recourse to legal proceedings, and to make any transfers that may be required, applying the proceeds of sale towards payment of within note.

C-2: New Orleans, ...189..

No.:.....

Received from the agent of the Comptoir National D'Escompte de Paris.....dollars, on account of ..... exchange on .....arising from shipment and from measures taken preparatory to the shipment of .....per .....for .....which is covered by policies of insurance against fire and marine risks and which policies are hereby bound and pledged specifically to .....for the fulfillment of the contract to furnish the exchange agreed to and for the money here advanced in case of the non-completion of the contract from any cause.

$.....

The company does not loan any money except upon notes of that kind or obligation of that character. Money is loaned principally to cotton and grain people; it lends in New Orleans, Shreveport and all around the Southern States. At least one-half the money loaned is loaned on cotton and grain in transit which is not in New Orleans. As a rule the money loaned is on cotton and grain to be exported to Europe.

Witness buys foreign drafts on the other side durig the time cotton is in transit; they want money because here as a rule they pay for the cotton as against the railroad bill of lading, and the company through witness loan thereon money; that is for the cotton outside of New Orleans.

The company takes a pledge of the bill of lading and the cotton is brought to New Orleans, Mobile, and Galveston; to different parties. The foreign bill of lading is attached to the draft. The money is loaned on that bill of lading for the draft drawn for the cotton or grain. That is the company's business, for cotton in transit. For this cotton and grain that the company advance on the company takes the bill of lading first, then witness buys a foreign draft; the

railroads' bill of laiding are exchanged for the ship's bill of lading; they simply purchase the bills of lading.

As to other advances that the company makes it takes documents such as the two marked "C-1" and "C-2," offered in evidence, different in different cases.

Supposing the company to loan ten thousand dollars to a man in the country, witness takes the receipt for the cotton where it is to be shipped in a few days, and where the cotton is not to be shipped in a few days, he takes the note, a note like the one marked "C-1."

The notes are not sent to Paris. Witness keeps them on trust; they are not negotiable; they are kept in trust for the account and benefit of the Comptroller in Paris. Witness is simply a clerk, and has no individual interest in the business. The company has no capital in Louisiana.

Being asked whether he could tell what monies he had at any time in the handling of his business and wants, he answered "that the balances were returned to Berlin, London and New York, from there." Being asked how he got it, he answered: "By drawing according to credits—the Comptoir had arrangements for it."

He further testified that the average amount of money he had in bank, year in and year out, was twenty thousand dollars; that the company had been doing this business in Louisiana since 1895, that the highest assessment which had been placed upon it by the Board of Assessors prior to 1899, upon the company's "money in possession in bank, etc.," was twenty thousand dollars altogether; they raised in 1898 to fifty thousand dollars.

The company had no more money in 1898 than before. At the time the present assessment was made in March, 1898, the company did not have more than $20,000. The company made a verified application for reduction of assessment.

The company never loaned money on due bills, to cotton factors, it loaned money to factors on cotton, not due bills, on cotton in presses. Witness supposed all the cotton was exported. The factors, in many instances, came back, paid the loans and took back the cotton receipts.

The company had loaned money on domestic products

not exported from the city, and things of that kind; people had borrowed money in Louisiana and paid it back without any foreign exchange appearing in the transaction, but not frequently.

Being asked on cross-examination, whether the company's entire business was confined to foreign bills of exchange, witness answered "that every thing was foreign exchange with him." Being asked "whether there was any foreign exchange in loaning to cotton men?" he answered: "Yes, when he got the money from Paris."

Witness stated the company loaned money to people in Louisiana and they paid it back there; they gave the company an obligation to show that they owed the company that money; as a rule the company collected it when it was due (the note), witness was agent for the company with full power of attorney, to represent it; he was no more than a mere clerk, he could draw more than twenty million if he chose. If a person wanted ten or twenty thousand dollars he did not send the papers to Paris to find out whether he could make the loan. He had no discretion, the company wrote to him what to do. The company loaned money on sugar. If a man went to him with a warehouse receipt for one thousand hogsheads of sugar and wanted to borrow $20,000 on it, he could lend it without writing to Paris, if the house was good, and according to the instructions he had received beforehand.

If his instruction from Paris should say he could loan on sugar and cotton and grain, he would loan the money if he thought the collateral was good.

He did not know whether the sugar was exported. The parties would come in, pay their loan and take the receipt away, and pending that time witness held the receipt, and the note. The company did the same thing with cotton and grain. A great deal of the company's business was done in that way.

In addition to this, witness bought bills of exchange on London and Paris and other places, to which are attached bills of lading; that was a large part of the company's business.

The company did not handle commercial paper, it did not

make any local discounts. It had loaned money on state or city bonds, but very seldom. Sometimes the cotton people got rid of their cotton and wanted some money to advance to the interior, and they replaced their cotton by bonds, but very seldom; it had never advanced to the banks in New Orleans; it had never loaned on United States bonds, but would do so willingly.

When money was loaned, secured by collateral bonds, witness would keep the securities and the note attached in Louisiana; he would keep them himself for the Comptoir; the notes were kept here, not sent to Paris.

When loans were made he reported them to Paris; he would not report them after they had been paid back. He did not, in making loans, fix any rates of discount or rate of interest; he did not discount.

The company knew of the loans ten days after they were made; the money was often paid back before the mail reached Paris.

Witness drew bills of exchange on Paris for the funds he required here; he deposited in New York as a rule; he kept some money to his credit in bank in New Orleans; an average of about twenty thousand dollars; he could obtain a loan if he wanted it; witness meant that if all his outstanding checks were paid, there would only be twenty thousand dollars to his credit in bank.

His checks on the New Orleans banks amounted in the course of a year in the millions. There was this average of twenty thousand dollars without reference to any special time; very often he was overdrawn. The $20,000 was about the average balance he carried in bank, after deducting the checks that were outstanding.

The company loaned money on cotton, sugar and grain, on warehouse receipts and bills of lading; it loaned money also on city and State and United States bonds. Witness knew of no other character of loans on which it advanced money; it did not lend money to planters or refiners or manufacturers; or loan on mortgage or vendor's lien. The average balance in bank, kept in bank, was $20,000, but the deposits in the year ran up in the million.

Witness stated that on one occasion he had loaned to Mr.

Nicholls on collaterals, premium bonds and State bonds, different collaterals, that the company would not loan on goods, ware and merchandise; that he would not loan on them but that he would sometimes accept them against a credit because sometimes a client wished to make the exchange of a collateral; he would allow a substitution of merchandise for bonds, but only for the time being so as to enable parties to handle their goods.

The company was not carrying on a general loan business; three-fourths of the business was cotton and grain, the company was not carrying on a general loan business outside of the foreign exchange business; the whole thing was a foreign exchange business and there was nothing of that kind in the company's books.

The following questions were asked by the State and answered by the witness.

"Q.—You say that the foreign exchange business is when a person comes with warehouse receipts for sugar or anything else, that not having more than twenty thousand dollars, in case you desire more you draw a bill of exchange on Paris or London or New York?

"A.—Yes, sir.

"Q.—And thereupon you take the obligation of this person together with his security, and you keep them here in your own vault?

"A.—Yes, sir.

"Q.—It is paid here?

"A.—Yes, sir.

"Q.—And if it is not, you take the collateral?

"A.—Yes, sir.

"Q.—That is what you call it?

"A.—Yes, sir.

"Q.—You don't refer the matter to Paris?

"A.—Oh, yes.

"Q.—If you haven't got the money here you draw a bill of exchange on Paris?

"A.—Yes, Paris—Berlin. may be New York—any place.

"Q.—You get this bill of exchange cashed here?

"A.—No, not here, but in New York, as a rule for I buy exchange there.

"Q.—And you take this money and you loan it out?

"A.—Yes, sometimes I loan it, and sometimes the clients draw it themselves.

"Q.—In other words then, all the foreign exchange has to do with this portion of the business, is that you get the money through bills of exchange.

"A.—Foreign exchange—I get the money through foreign exchange. Yes, sir; I get it through foreign exchange.

By the court:

"Q.—In loans of that sort when you hold documents such as C-1 and C-2, do they as a rule average more than fiifty thousand dollars?

"A.—No, sir; not at one time.

"Q.—Have you an idea what they average the year through?

"A.—A big amount.

"Q.—I mean the amount on this kind of note and this sort of contract that you have on hand at any one time; are they as much as $50,000 on an average?

"A.—Yes, sir; and more sometimes.

By Mr. Hall (plaintiff's counsel):

"Q.—I understood you to say that the Comptoir keeps no money here for the purposes of this exchange business, but that when you make a loan you draw on Berlin or Paris or whichever is most available and you sell that exchange to a bank or cash the exchange here, or in New York as the case may be, and that money is immediately paid on that loan and therefore there is no need of keeping a bank account of any large sum?

"A.—Yes, sir; that is right.

"Q.—And when that money is loaned on foreign bills of exchange or bills of lading, they are sent to Paris immediately?

"A.—Yes, sir; and different places by the first mail.

ADMISSION.

It is admitted that the undisputed part of this tax for the year 1898 has been paid without prejudice to the rights of any party to the suit, and the receipt of the city for the sum of $414, being taxes upon $20,000 money in possession,

and that the offer was made to pay on the same tax to the State tax Collector and it was refused."

By Mr. McLoughlin, (Assistant City Attorney):

"Q.—The question that was asked you and the answer you gave in reference to bills of exchange only refers to the bills of exchange you purchased here?

"A.—Yes, sir.

"Q.—You buy bills of exchange outright?

"A.—Yes, sir; through the bills of exchange I send the money back from where I borrow it.

"Q.—You buy bills of exchange outright?

"A.—Yes, sir.

"Q.—You don't mean you loan money on bills of exchange on Europe in New Orleans?

"A.—No, sir.

"Q.—You don't loan money on bills of exchange?

"A.—No, sir; if it is not in proper form or the goods are subject to depreciation, I may loan part of it."

OPINION.

We were told from the bar that the only question submitted to us for decision is, whether the non-negotiable notes taken and held by the plaintiff under the circumstances disclosed by the evidence, are liable to taxation; that should the court be of the opinion that they are taxable, the amount claimed from the plaintiff on that item is correct.

"Plaintiff's contentions are summarized in the *syllabus* of his brief, as follows:

"Plaintiff is a French corporation domiciled in Paris, France. It is engaged in the transaction of an exchange and brokerage business in the City of New Orleans, being here represented by an agent.

"It loans money, upon bills of lading covering cotton and grain sent from interior points of Louisiana and neighboring States, to Galveston, New Orleans and Mobile, for shipment to Europe.

"And sometimes it loans money on warehouse receipts of such agricultural products, while stored preparatory for shipment.

2.

"All the money which it lends is raised by selling its drafts of exchange to New Orleans banks, such bills of exchange being drawn upon Paris, London, Berlin or New York, wherever most advantageous, and the money thus borrowed from the banks is paid by plaintiff to the holders of the cotton or grain in question.

3.

"To meet these drafts of exchange, while the cotton and grain is on its way to Europe, plaintiff buys drafts of exchange on the foreign market upon which its original draft was drawn, and with the proceeds of said purchased drafts of exchange meets its own drafts.

4.

"In the few instances when the course is not pursued, plaintiff raises money by drawing a draft of exchange on itself in Paris, and has the same cashed by local banks. It has no funds nor capital of any kind in the City of New Orleans, except an average fluctuating balance growing out of these transactions, which in no case and at no times, exceeds $20,000, and upon this $20,000 it pays taxes as upon money in hand.

5.

"Plaintiff, therefore, for all funds which it utilizes in this city and the adjacent States, is primarily a borrower from local banks, and ultimately, it repays its loans with money raised in Europe or New York.

6.

"For the moneys loaned in this way it receives non-negotiable promissory notes of hand, made payable to it, and not to order. It has been assessed for the first time in 1898, upon these notes as upon 'credits.' Such assessment and the consequent tax are illegal, because such credits are incorporeal and intangible, and can have no independent *situs* of their own; but necessarily follow and attach to the domicile of the foreign plaintiff in France.

7.

Intangible property has no actual *situs*. If a credit for the purpose of taxation be assigned a *situs*, it must be the place where it is owned, not the place where it is owed. To make it follow the debtor instead of the creditor is to tax property instead of wealth. 25 Ohio State, 1; 3 Oregon, 13; 2 Oregon, 327; 16 Cal. 167; 23 Cal. 138; 3 McCord, 378; 50 Ga. 387; 33 Ga., 113; 23 Ga., 566; 3 Colorado, 349; 96 U. S. 445; 9 Wheaton, 907; 15 Wallace, 320; 19 Md. 22; 29 Md. 49; 7 Ohio, 52; 10 Allen, 101; 28 Vermont, 188; 42 Conn., 426; 25 Cal. 602; 38 Cal. 466; 2 Dutcher, 184; 4 Woods, 207; 12 Iowa, 539; 22 Fed. Rep., 602; 11 Ann., 268-282; 38 Cal., 461; 35 Cal., 282; 29 Cal., 533; 25 Cal., 603; 39 Conn., 176; 25 N. J., 531; 26 N. J., 564; 54 Iowa, 57; 96 U. S., 452; Cooley on Taxation, 1; 15 Wallace, 319; Colley on Taxation, 21; 52 Conn., 26; 426 Ohio, 1; 101 U. S., 499; 27 Grattan, 354; 173 U. S., 203· 15 Wallace, 323.

8.

"As held in 15 Wallace, 323, the true test of the taxability of a credit held by a non-resident is:

"Does such credit, by general usage, acquire the character of, and is it treated as property, and does it pass as money wherever it may be?

"State and municipal bonds have this character, and so, possibly, checks upon solvent banks.

9.

"Act 98 of 1886, p. 134.

"Act 85, of 1888, p. 111.

"Act 106, of 1890, p. 121, and

"Act 170, of 1898, only provide for the taxation of property 'situated within the State of Louisiana.'"

And the legislature has not attempted, by any enactment, to localize credits, held by non-residents, the act simply providing that all credits shall be taxed; that provision being limited by the general statement, in all the revenue acts, that only property in the State of Louisiana is liable to taxation.

The evidence establishes that the plaintiff corporation is

pursuing in the city of New Orleans a continuing business through an agency there; that it loans money upon collaterals of various kinds for which the borrower gives the company his non-negotiable promissory notes.

These notes received by the agent are kept by him, until maturity, when they are either taken up by payment in money by the debtor or through exhaustion of the collateral.

The monies so received are reinvested in other loans.

It is claimed that the plaintiff never sends its own monies into this State and there lends them, but that the monies loaned are obtained through foreign drafts or bill of exchange.

We think the particular manner or instrumentality by which the monies used by the plaintiff in the course of its continuing business in Louisiana is obtained is a matter of no moment or significance in the consideration of the question which we are now dealing with.

It, beyond question, loaned monies in Louisiana which for the purpose of the loans were the company's monies, and the borrowers give the company their own non-negotiable promissory notes to represent money received from the company. The notes represent an equivalent amount of money of the company in Louisiana.

Plaintiff claims that these non-negotiable notes are to be considered as being constructively in France, the domicile of the plaintiff company; that a promissory note follows as much the domicile of the creditor as does an open account. That the rule *mobilia sequuntur personam* applies to them and they are no more taxable than if they were in fact in the vault of the company in Paris. This rule in its application to the subject of taxation has been recently exhaustively considered by the Supreme Court of the United States in the case of City of New Orleans vs. Stempel, Guardian, in which our own decisions as well as those of others were collated.

The *syllabus* of that decision declares that "notes and mortgages, the owner of which is domiciled in another State, when they are kept within the State by an agent, may

be subjected to taxation by the law of the State in which they are held."

A non-negotiable note is certainly sufficiently concrete in form to be made an object of taxation. The fact that it may be less valuable in fact than it appears on its face, may effect the estimate to be placed upon it for assessment purposes, but that question is something other than the question of its being a proper object of taxation.

If a person domiciled abroad were to die leaving non-negotiable notes in this State in the hands of an agent, the presence of these notes in Louisiana would authorize the opening of the succession in Louisiana for the protection of Louisiana creditors.

We think the State has as much legal right to subject them being here to the payment of the contribution which it justly claims from all parties receiving the protection and benefit of its laws, who operate their property here for their individual gain and benefit, as any creditor would have.

The rule *mobilia sequuntur personam* is subject to numerous exceptions. Thus, in France, it has been held that "Les prelevements accordés aux heritiers Francais sur les biens situés en France comme indemnité des exclusions resultant de la loi étrangere peuvent etre exerces meme sur les valeurs payable par des banques étrangeres quand les titres soit nominatifs soit au porteur ont été laisses en France par l'auteur commun." (Civ. C. 27, Auot. 1850.)

We think the facts of this case bring it squarely under the decisions in Bluefield Banana Company vs. Board of Assessors and City of New Orleans, 49 Annual, 43, and Parker vs. Strauss, 49 Annual, 1173.

In the former case this court, referring to the corporation claiming exemption said:

"The foreign corporation had an agent here, where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent. Also for the

prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and city governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way. We find a statute of the State, which by its terms brings them under the operation of State and city taxation, and we are bound to give effect to its provisions unless they be in derogation of the constitution. The unconstitutionality of the act is not pleaded, and we of ourselves, see no unconstitutional features in it. The rule *mobilia sequuntur personam* is a fiction of law, not resting of itself upon any constitutional foundation, and which gives way before express laws, destroying it in any given case, where constitutional requirements themselves do not stand in the way."

There is no parrellism between this case and that of Clason & Company vs. The City of New Orleans, 46 An. 1.

The facts of the case are entirely different. Here the foreign corporation is engaged in a regular business investing and re-investing the monies through an agent in this State.

In the other case, Clason & Co. were merely the agents of an English firm for the purchase of cotton to be shipped by them at once to the firm in Europe.

Instead of paying for this cotton by means of bills of exchange transferred to the vendors which they themselves would have cashed, the agents, for convenience, had the bills cashed, deposited the amount in bank and drew against the funds in favor of the sellers.

For the reasons assigned it is hereby ordered, adjudged and decreed that the judgment appealed from be and it is hereby affirmed.

Rehearing refused."

ARGUMENT.

A careful reading of the foregoing opinion will clearly show that the same defence is being urged here, that was unsuccessfully attempted in that case, and which the Supreme Court of Louisiana negatived and overruled. It is an attempt to confuse two distinct branches of complainant's business, and to make it appear that this assessment sought to be made, and the tax levied here, is on foreign exchange, based on goods *in transit*, and intended *for export*. This is not the case at all. Indeed, under Sec. 1 of Act No. 170 of 1898, p. 347, about the middle of the paragraph, it is especially provided that "goods in transit for forwarding, not on consignment for sale, are not to be assessed," and consequently bills of exchange based on bills of lading for export of such goods are not taxable, and in this cause no such tax or assessment is sought to be levied or made.

The assessment here, and the tax levied, is on *loans of money at interest in* Louisiana made by the complainant, on State or city bonds, warehouse receipts, and other personal property, *not in transit or destined for export*. It is on the same category of loans at interest as may be, and are, made, every day by New Orleans banks, and other corporations, as well as persons, irrespective of the foreign exchange business. And yet, counsel for the complainant tries to confuse these two branches of complainant's business, and may possibly lead this Honorable Court into an erroneous conception of the real question at issue here. The difference between the two branches of complainant's business is plainly illustrated in the record. On p. 40, of the

Record, Exhibit "E" shows the form of the instrument when money is loaned at interest on collaterals, which is the character of loans assessed in this cause, and on p. 41 of the Record, Exhibit "F" shows the form of the instrument when the complainant sells its foreign bills of exchange on bills of lading, or warehouse receipts, of goods intended for shipment, or export abroad. With the latter transactions, this cause has nothing to do. The two kinds of business are distinctively different. In the branch of the business to which this case relates, the Record shows a simple manner of procedure. On p. 26, Breton, complainant's sole witness, is asked:

> Q. "Or did you not lend money on agricultural products of Louisiana stored in different warehouses of the State of Louisiana, which were not to be shipped abroad?"
>
> He answers:
>
> A. "Well, yes, I lent money on agricultural products, some of them I could not know if they were shipped or not; but the bulk of the business done was against products which were to be shipped away from the State of Louisiana."
>
> * * * * * * *
>
> A. "On products which I could not know, whether they were shipped or not."
>
> * * * * * * *
>
> Q. "Did it not lend or advance money on State bonds, United States bonds, or city bonds."
>
> A. "Occasionally on city bonds and State bonds."

This testimony shows that the character of the property on which these loans were made were not foreign shipments, but simple loans, on which foreign exchange was only used in order to enable the complainant to get the

money to make the loans. The assessment on these interest-bearing loans was ony $175,000.00, which is a fair assessment, as the witness testifies, on p. 27 of the Record, that the whole annual business done by the complainant was over a million of dollars, and on p. 26 he had testified that the foreign exchange business on goods destined for export was 80 per cent. of the entire business, and 20 per cent. of the entire business was on mere loans at interest. Thus, according to his own admission, the 20 per cent. of the business done in loans on securities not intended for export or shipment abroad, would amount to over $200,000, entirely aside from the foreign exchange business. But the witness, as well as his counsel, is constantly making the vain and transparent attempt to confound this latter branch of complainant's business with that of foreign exchange sold on products *intransitu*, intended for foreign shipment or export, and to have the court believe that the State and city are endeavoring to levy and collect taxes on that branch of their business which deals with foreign exchange on shipments abroad. And this is artfully attempted by showing that, *sometimes*, in lending money on securities not intended for export, the complainant gives its exchange to the borrower. We have said *sometimes*, because the witness says that often the complainant gets the money itself by having its own bills cashed, and pays the customer in cash, and at other times opens for the business a credit in Paris, on which the customer can draw. On p. 26 the witness, Breton, testifies:

> Q. "When, in answer to the fifth interrogatory, you say the money was obtained by drawing foreign exchange on Europe, you mean to say that the cash

which you lent in the city of New Orleans was obtained by drawing this foreign exchange on Europe and getting it cashed here in the banks."

A. "Getting it in New York."

A. "Yes, sir."

Q. "And that was the money that was lent?"

A. "Yes, sir."

And again, on p. 29, Record:

Q. "The sum and substance, I understand, of the exchange business, is that whatever money you loaned, and in whatever form it might be, the money was raised by exchange?"

A. "Yes, sir."

And on p. 31 of the Record:

Q. "When you put $50,000, we will say, to the credit of one of your customers on your books, does he give you any receipt for your money, previous to your crediting him with that on your books?"

A. "I do not credit him; I pay him."

Q. "You pay him?"

A. "Yes, sir. *I pay him the money.*"

Thus, we see dealing in foreign exchange, or any foreign exchange transaction whatsoever, cuts no figure in the case at bar, except that the complainant realizes the cash which it loans out at interest, by drawing its own bills of exchange, and this in nowise affects the character of the loan at interest. It was on this account the Louisiana Supreme Court said, in 52 La. An. p. 1330:

"We think the particular manner, or instrumentality by which the money used by plaintiffs in the course of its continuing business, *is a matter of no moment, or significance in the consideration of the question which we are now dealing with. It beyond question loaned money in Louisiana, which, for the purpose of the*

loans, were the company's moneys, and the borrowers give the company their own non-negotiable promissory notes to represent money received from the company." (The Italics are our own.)

Counsel for complainant, in his oral argument before your Honors, criticized this opinion of the Supreme Court of Louisiana, and urged that the court erred in that decision, making an error of fact, in the particular that the business of lending money on personal property, not *in-transitu*, or intended for export, was styled by the court a

CONTINUING BUSINESS,

which he contended was not true in fact. It is difficult for us, with due respect to our opponent, to understand how counsel's contention can be seriously made on this point. The evidence adverted to in the Supreme Court's opinion, abundantly establishes the fact that this branch of complainant's business, was a continuing one, and complainant's own sole witness in the case at bar strengthens and firmly establishes that fact, beyond the peradventure of a doubt. On page 93 of the transcript and Record, Breton, the sole witness of complainant, testifies:

> *"There is a continual renewal of such dealings and advances,* which, taken during the year, will give rather a large amount, which, however, can not be considered a fixed loan." (The Italics are our own.)

And again, on p. 27:

> Q. "As I understand you, a great many of these loans were for short periods, *so that you turned the money over and over again during the year?*
>
> A. *"Yes, sir."* (The Italics are our own.)

Thus, it is established by the positive testimony of complainant's own witness, that the identical money loaned

was, and is, when returned to complainant, again re-loaned or re-invested, thus making this branch of the business a continuing one. Indeed, it would be preposterous to believe for an instant that if the money loaned was returned by the borrower to the agent of complainant, and another application was made by another would-be borrower, that the agent would remit the money in hand to Paris, and then draw a bill of exchange against it, in order to realize the cash for the loan, thus making a useless delay and complication, when he could immediately lend out to the applicant the cash already in hand, realized on the prior loan. The witness admits that fact, when he admits that the money realized on these loans, when he says that the "money is turned over and over again during the year."

THE MONEY LOANED AT INTEREST.

It was also denied by complainant's counsel, in his oral argument, that the checks or overdrafts given by these borrowers for the loans, bore interest. Here, again, the Record contradicts this contention. On p. 31 of the Record, Breton is asked:

Q. *"Did you charge interest on your overdrafts?"*
A. *"Yes, sir."* (The Italics are our own.)

And on p. 33, on re-direct examination:

Q. *"And how about interest?"*
A. *"And in that way they are only charged interest on their daily ovedrafts."*
Q. *"Whereas if they give a note for the entire amount, they pay interest upon the entire amount, as evidenced by the note?*
A. *"Yes, sir."* (The Italics are our own.)

So, in Exhibit "E," Record, p. 40, it is agreed "that whenever the undersigned shall become, or remain, directly or contingently, *indebted to said company for money lent, or for money paid for the use or account of the undersigned, or for any overdraft,* or upon any endorsement, *check,* draft, guarantee, or in any manner whatsoever, or upon any claim, the said comptoir shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise, against the undersigned or his or their executors, administrators or assigns, namely."

And at the end of this agreement, in paragraph 3, it is provided that, in case of the sale of the securities hypothecated, the Comptoir shall "apply the proceeds of such sale, as far as needed, towards the payment of any or all such liabilities, *together with interest* and expenses of sale," etc. (Italics are our own). So that it seems clear that the money thus loaned was loaned at interest, the only difference from the case in 52 La. Annual, and the case at bar, being that the interest ran in the former case at the inception of the transaction, and on the whole amount of the non-negotiable note, from the date at which it was given; whereas in the case at bar the interest only ran from the date on which each separate amount was borrowed and the check drawn. Thus, these interest-bearing loans fall directly under the nomenclature of the Louisiana Revenue Statute as "money loaned on interest."

Evasion of Taxation.

In addition to the cases cited and quoted in our original brief, in regard to changes in manipulating property so as

to evade taxation, we submit Ransom vs. City of Burlington, 82 N. W. 427, in which a conveyance was made to another person by the taxpayer in order to avoid taxation. The Supreme Court of Iowa said:

> "It was fraudulent, being voluntary, without consideration, and made for the express purpose of defeating the assessment, and, therefore, it should be disregarded. * * * While one may lawfully dispose of his property to escape taxation—even taxation of a general character—the law will not uphold any mere manipulation, under the guise of disposition, the only effect of which is to defeat taxation."

A change in the manner of conducting its business was declared to be for the purpose of evading taxes, and therefore null and of no effect, in D. & H.Canal Company vs. Commonwealth, 17 Atl. 175.

A somewhat similar case is found in 81 N. W. 965. Loud & Sons' Lumber Company vs. Elmer, T. P.

Indeed, no stronger enunciation of the doctrine can be found than in the declaration of this Honorable Court, in Bristol vs. Washington Co., 177 U. S. 144.

> *"Persons are not permitted to avail themselves, for their own benefit, of the laws of a State in the conduct of business within its limits, and then, to escape their due contribution to the public needs, through action of this sort, whether taken for*

In regard to the

FACTS OF THE CASE,

We differ in no wise from the summary of the Master, in his report, found on pages 47 and 48 of the Record, as the facts are those correctly stated, and there is really no dispute as to the facts; but our dissent from the Master's report is simply and solely on the application of the prin-

ciples of law applicable to the facts as found by him. In this respect we differ widely from his view of

THE LAW, APPLICABLE TO THE CIRCUMSTANCES OF THE CASE.

We strongly insist on four propositions, all of which, we think, that we have incontestibly established:

I.

That there is nothing in this assessment and levy, of the tax herein, in conflict with the Constitution of the United States, or the Constitution or jurisprudence of the State of Louisiana.

II.

That there are but two questions at issue, one being whether the mere change of the evidences of debt from non-negotiable promissory notes, to checks or "*overdrafts,*" will render such checks or "overdrafts," less "concrete" or tangible evidences of debt, as required by the jurisprudence of Louisiana. We think that the change had no such effect; and,

III.

Even if it had such an effect, all the evidence and circumstances of the case show that the change resorted to was an attempt at an evasion of taxation, which no court should, or can, support or sustain, and allow such a fraud on the revenue of a State.

All these propositions we submit we have abundantly sustained.

All of which is respectfully submitted.

F. C. ZACHARIE,
E. K. SKINNER,
H. GARLAND DUPRE,
Solicitors for Respondents and Appellants.

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SUPREME COURT OF THE UNITED STATES.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR DEFENDANT.

HARRY H. HALL,
Solicitor of Complainant.

OCTOBER, 1903.

THOMASON, PRINT, 526-528 NATCHEZ ST.

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THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR DEFENDANT.

May it please the Court:

The ISSUE is as follows:

Complainant, a corporation organized under the laws of the Republic of France, and domiciled in Paris, brings this Bill of Complaint against the Board of Assessors for the Parish of Orleans, the City of New Orleans, and the State Tax Collector, averring:

That, since 1895, complainant has established and maintained in the City of New Orleans an office or agency for the purpose of conducting a business of buying and selling foreign exchange.

That, for the purposes of said exchange business, and as an incident thereof, it loans money on the agricultural products of Louisiana and adjacent States, in every instance, however, obtaining the money thus loaned by the sale of its exchange on New York, or other commercial centers of the world.

That it has no capital in the City of New Orleans, and that the credit and capital thus employed by it in thus dealing in exchange is situated and exists wholly without the State of Louisiana and notably in the City of Paris, France.

That its aforesaid business was distinctly recognized by the Louisiana Legislature, which levied thereon a license tax of 2½% on the gross *profits* of all such exchange.

That complainant has regularly paid this and all other taxes legally assessed upon its property.

That, in compliance with the statute, complainant made due return of its property for taxation for the year 1901, to-wit:

Office furniture *$1,000,*
Money in possession, on deposit or in hand *$20,000,*

but that the Board of Assessors levied for that year against complainant the further assessment:

"Money loaned on interest, all credits, and all bills re-
" ceivable for money loaned or interest, or advanced, or for
" goods sold, $175,000."

That without just cause, defendants refuse to comply with complainant's due and legal demand to cancel said assessment; that complainant will pay the tax upon the $21,000 returned by it; that complainant has retained "*no credits or bills receivable for moneys loaned or interest*

advanced," but whenever it has so advanced or loaned money, the same was advanced or loaned directly by granting to the borrower thereof a credit directly upon complainant's domicile in Paris, and that it does not hold in the City of New Orleans or State of Louisiana any bills receivable or evidences of indebtedness.

That, under the Constitution, laws and jurisprudence of the United States and State of Louisiana, the power of taxation of said State and of the City of New Orleans is limited to persons and property within the State, and that no tax can be legally levied upon property not actually or constructively within the State; that jurisdiction is as essential to taxation as to the validity of a judgment, and that no tax can be validly levied when the thing sought to be taxed is not amenable to the authority of the government which levies the tax, and such legislation or attempted construction thereof, is violative of the Fourteenth Amendment; and complainant asks for an injunction and that said assessment be decreed to be illegal, unconstitutional, null and void, and that it be cancelled from the said assessment rolls. (Transcript, p. 1 *et seq.*)

THE ANSWER.

Denies that complainant retains no capital in the City of New Orleans, or that said money, when there received, is remitted at once to Paris, averring the fact to be that when the debtor pays money to complainant in New Orleans, it retains the same there to loan to other persons. It denies that notes and bills taken by complainant were sent to Paris, but avers that "*even if it were the case that "said notes and bills were remitted to France, as alleged in*

" complainant's bill, that said notes and bills would yet be liable " to taxation in the State of Louisiana, in view of the nature of " these transactions," etc. (My italics).

STATEMENT OF FACTS.

State vs. Comptoir National, 51 La. An. 1272, was a suit brought to recover $42,000, alleged to be due by defendant as license taxes for carrying on in New Orleans a *banking* business during the years 1895, 1896, 1897, 1898. The Supreme Court held that defendant was not doing a *banking* business; that it was doing an exchange business; that, prior to 1898, no license tax in Louisiana had been laid on such business, and that, by Act 127 of 1898, the Legislature levied for the first time, for 1899, a license tax upon such business for the purpose of meeting the requirements of defendant's operations in New Orleans. The Court found (A. D. 1899) in reference to the Comptoir's method of transacting its said business in New Orleans:

"In order to procure the money to transact this business, " the defendant sells, in New York, drafts on London, Paris, " Germany, or wherever they can be drawn to best advan- " tage, and then, to transfer to New Orleans, when it is " needed, the money thus realized in New York, defendant " sells, in New Orleans, its drafts on New York against " said money which is there deposited to its credit.

" Defendant receives no deposits in New Orleans and " accumulates no funds here save in the manner and for " the purposes as thus stated. It makes no discounts of " ordinary commercial paper, and lends no money upon " mortgage or other security save cotton or grain which is " *en route* to foreign countries and the bills of lading for " which are transferred to it. And the business thus de- " scribed appears to have been the business contemplated " when the agency was established here in 1895-6." (P. 1275).

Acts of Louisiana, 127 of 1898, Section 2: "Be it further "enacted, etc., that all banks, banking associations, corpo- "rations or companies who may, in their own name or in "the name of their representatives, engage in this State in "the business of lending money or dealing in exchange, "shall pay a license of 2½% on the gross profits of all "money loaned and all exchange bought, and all exchange "sold, and all other business done, provided no license "shall issue as provided for in this Section, for less than "$1,000.00; provided that the minimum license of One "Thousand Dollars shall not apply to those corporations or "companies lending money secured solely by mortgage on "real estate."

ALBERT BRETON, complainant's New Orleans agent, from 1895 to 1901, says: That its business there is that of selling exchange, and *for the purpose thereof*, it loans money on bills of lading and warehouse receipts, obtaining the money therefor by selling foreign exchange on Europe; that it has no fixed capital in New Orleans, but an average of $20,000 deposits in the local banks; that **Act 127 of 1898** was adopted at the suggestion of witness, after full discussion before the Ways and Means Committee, and with the understanding that the tax imposed by said Act would cover all taxes to be paid by the Comptoir in New Orleans; that under this Act, the Comptoir has paid annually a license tax of from $2500 to $3500. P. 19.

That the average cash balances in local banks aggregate $20,000. Pp. 23-27.

That the capital of the Comptoir remains in Paris and anything drawn in New Orleans comes from the surplus in Paris. P. 27.

That the object of this business is to pay in advance, by sale of foreign exchange, money needed for purchase

of cotton, etc., and to facilitate local merchants in handling through New Orleans products bought in the country, and to employ funds arising from exchange on Europe, sold in advance at higher rates, with a view to remitting the same funds back to Europe at lower rates. P. 20.

That the profits from foreign exchange form the difference between the net rate of selling and the net rate at which it can rebuy to cover such sales. P. 21.

That the Comptoir in New Orleans, for money required, sells exchange on Paris, London or Berlin, and the amounts so drawn are remitted back to those points by a foreign exchange transaction. P. 22.

That every transaction made begins by foreign exchange and ends by foreign exchange. Whatever money is loaned is raised by exchange. P. 29.

That when a customer wants to use a credit for a fixed period of time, it opens for his account a credit to be utilized by his drawing on Paris or London, and the amounts drawn against such credits are to be remitted (*from abroad*) to Paris or London before the maturity of the debts.

That when it uses foreign credit, the drafts issued never come back to America. P. 22.

That the Comptoir in New Orleans advanced money in two ways, either by opening a credit in favor of its borower on the Comptoir in London or Paris, when he draws on that credit and sells his draft; or, if the loan is for a short period, the Comptoir sells its draft in New Orleans and hands him the money. He then is overdrawn and the Comptoir holds his paid cheques to evidence the overdraft. P. 32.

When the money loaned is refunded, he does not take

back his cheques, because the Comptoir keeps with him an account current which varies every day. P. 32.

That when a customer borrows money he draws a cheque and no note or due bill is given. P. 28.

That its customers keep simply overdrawn accounts; that its credits are issued and drawn on Paris and London, and are to be reimbursed in these places at respective maturities. P. 21.

During the years 1900 and 1901, the Comptoir received no promissory notes or bills receivable for moneys loaned, because its clients preferred to be and insisted on being simply overdrawn, so as to be able to reimburse the advances, in whole or in part, whenever it might suit their convenience so to do. P. 22.

By drawing cheques they keep a sort of account current constantly overdrawn, which they repay when they please, and they only pay interest on their daily overdraft. P. 33.

That the change in the method of doing business in 1900 and 1901, from receiving non-negotiable notes, allowing simply overdrawn accounts, as done by the other banks, was due to complaints of our customers who wanted to be allowed to be overdrawn instead of requiring notes. Pp. 23–31.

The Commercial National Bank transacts its foreign exchange business in the same manner by taking cheques. P. 35.

The Whitney National Bank, by taking receipts. P. 36.

The authorization for draft by borrower on Comptoir in Paris, London, Berlin or elsewhere in Europe, is at p. 38. Likewise Report of Special Master, Judge W. W. Howe. P. 43.

The Comptoir has never before had this assessment levied against it. P. 29.

ARGUMENT.

From the foregoing the following facts are apparent:

1st. The Comptoir's agent in New Orleans pays for it, annually, a license tax of from $2500 to $3500. He further pays the assessed taxes on $20,000, the average of its fluctuating bank balances in that city. Further, it pays taxes upon the value of its office furniture.

2d. It has no bills or promissory notes in the City of New Orleans, the money loaned by it being represented by paid cheques and the indebtedness being an overdrawn account current and by bills of lading *en route* to Europe.

3d. The Comptoir's business in New Orleans is the *exchange* business. The profit in that business is the result of its great credit in the money markets of the world and its unusual facilities for buying and selling foreign exchange to the best advantage.

4th. It only loans money for the purpose of making an exchange transaction, its loan being a mere incident and the exchange the principal object of the transaction.

5th. The Comptoir, in New York, sells foreign exchange on London, Paris, Berlin, or elsewhere, and places the proceeds of sale thereof in New York to the credit of the New Orleans office. It may be readily understood that the foreign bills of the Comptoir command a higher price than the bills of exchange of or foreign drafts of a merchant.

A purchaser of cotton in New Orleans applying to the Comptoir for money wherewith to pay the purchase price of cotton which he has bought to ship abroad, delivers to it

his draft on his foreign consignee with bill of lading attached. The Comptoir buys this draft or private bill of exchange, at a profit over the price at which it sold its own exchange in New York. To pay for this private bill of exchange, it sells to a New Orleans bank its draft on the fund to its credit in New York and hands the proceeds to the shipper of cotton.

If a larger credit covering many transactions is required, the Comptoir gives to the borrower a letter of credit authorizing him to draw directly on the Comptoir in Paris or London or Berlin, or elsewhere.

6th. When the borrower returns to the Comptoir, in New Orleans, the money loaned, it at once buys said exchange on that foreign city where it can buy to best advantage.

7th. Procuring all funds by selling of exchange, and remitting all loans by purchase of exchange, there is no capital or money of the Comptoir in New Orleans, except such fluctuating balances as arise from delays in remitting. This average balance has been judicially determined to be $20,000. (**Comptoir vs. Assessors, 52 La. An. p. 1319**).

8th. The Comptoir, prior to 1900, took, for the exchange loans, non-negotiable notes. Since that time, in compliance with the demand of its customers and in conformity to the custom of the other banks, which either take receipts or permit an overdraft by cheques, it has received no notes or other evidences of indebtedness.

9th. In buying the merchant's private bill of exchange the same is forwarded by the Comptoir, *with bill of lading attached.* P. 20.

Of course, in advancing the purchase price, a margin is,

reserved. The real evidence of debt, the merchant's draft, and its security, the bill of lading, go immediately to Europe. Payment there extinguishes the debt and leaves a balance of the margin *due to the merchant in New Orleans. The cheque drawn by him does not evidence the debt, but is merely a memorandum of its amount.*

10th. But, neither prior to 1900, when it took non-negotiable promissory notes as evidences of its exchange loans, nor during the time covered by this suit—when the said loans were evidenced by overdrawn accounts current,—did it ever hold the sums thus represented, when paid, for continued investment in New Orleans, but it invariably bought exchange with said funds. Its business was buying and selling exchange, not lending money. It only loaned money so that it might sell exchange. It sought no transactions which did not originate and terminate in exchange.

There is no equity in the claim for payment of a tax. The Comptoir gives the benefit of its world-wide credit to the commerce of New Orleans. If its merchants obtain cheaper exchange and lower rates of interest, the advantage comes from the markets of the world and not at the expense of local concerns.

The matter then for determination is, whether money obtained by a French corporation by sale in New York of its exchange on London or Paris, loaned to a borrower in New Orleans in form of a bill on New York, can be taxed in New Orleans because the New Orleans agent holds a memorandum of the loan or cheque showing an overdrawn account current!

Or whether money obtained for the New Orleans loan, by authorizing the borrower to draw on a letter of credit opened for him in Paris, can be so taxed!

Or whether a loan represented by the borrower's bill of exchange on his Liverpool vendee, with bill of lading attached, can be so taxed!

THE LAW.

I submit:

I.

IT IS NOT WITHIN THE POWER OF A STATE TO TAX PROPERTY UNLESS THE SAME IS ACTUALLY, OR BY CONTEMPLATION OF LAW, WITHIN ITS JURISDICTION.

St. Louis vs. Ferry Company, 11 Wallace, 429. "It has "been said that the power of taxation for the purposes of "the commonwealth, is a part of a government sovereignty "and is inseparable from it. It is for the Legislature to "decide what persons and property shall be reached by the "exercise of this function, and in what proportions and by "what processes and instrumentalities taxes should be as- "sessed and collected. The authority extends over all per- "sons and property within the sphere of its territorial "jurisdiction.

"When called into activity, there can be no limits to the "degree of its exercise except what is found in the wisdom "of the law making power, and the operation of those pre- "sumptive principles which lie at the foundation of all "free government.

"Where there is jurisdiction neither as to person nor "property, the imposition of a tax would be *ultra vires* and "void. If the Legislature of a State should enact that the "citizens or property of another State or power should be "taxed in the same manner as the persons and property "within its own limits and subject to its authority, or in "any other manner whatsoever, such a law would be as

" much a nullity as if in conflict with the most explicit " constitutional inhibition. Jurisdiction is as necessary to " valid legislative as to valid judicial action."

State Tax on Foreign Held Bonds, 15 Wallace, 300.

" The decision is, nevertheless, authority for the doctrine " that property lying beyond the jurisdiction of the State " is not a subject upon which her taxing powers can be " legitimately exercised. Indeed, it would seem that no " adjudication should be necessary to establish so obvious " a proposition.

" The power of taxation, however vast in its character " and searching in its extent, is necessarily limited to sub- " jects within the jurisdiction of the State. These subjects " are persons, property and business.

" Whatever form taxation may assume, whether as du- " ties, imposts, excises or licenses, it must relate to one of " these objects. It is not possible to conceive of any other, " though, as applied to them, the taxation may be exercised " in a great variety of ways; it may touch property in " every shape, in its natural condition, in its manufactured " form, and in its various transmutations. And the amount " of the taxation may be determined by the value of the " property, or its use, or its capacity or its productiveness.

" It may touch property in every shape; it may touch " business in the almost infinite forms in which it is con- " ducted; in professions, in commerce, in manufacture, " and in transportation.

" Unless restrained by provisions of the Federal Consti- " tution the power of the State as to the mode, form and " extent of taxation is unlimited where the subjects to " which it applies are within her jurisdiction.

" Corporations may be taxed, like natural persons, upon " their property and business. But debts owing by cor- " porations, like debts owing by individuals, are not prop- " erty of the debtors in any sense. They are obligations " of the debtors, and only possess value in the hands of the " creditors. With them they are property, and in their hands " they may be taxed. To call debts property of the debtors " is simply to misuse terms. All the property there can be,

" in the nature of things, in debts of corporations, belongs " to the creditors to whom they are payable, and follows " their domicile wherever that may be. The debts can " have no locality separate from the parties to whom they " are due.

" This principle might be stated in many different ways " and supported by citations from numerous adjudications; " but no number of authorities and no form of exception " could add anything to its obvious truth, which is recog- " nized upon its simple statement." (P. 319).

McCullough vs. State of Maryland, 4 Wheaton, 428, Marshall, C. J.:

" It is admitted that the power of taxing the people and " their property is essential to the very existence of the " government and may be legitimately exercised upon the " objects to which it is applicable to the utmost extent to " which the government may choose to carry it. The only " security against the abuse of this power is found in the " government itself. In imposing a tax, the Legislature " acts upon its constituents. This is, in general, a suffi- " cient security against erroneous and oppressive taxation."

United States vs. Erie Railroad Company, 106 U. S. 327. " There are limitations upon the powers of all governments " without any expressed designation of them in the organic " law; limitations which inhere in their very nature and " structure, and this is one of them—that no rightful au- " thority can be exercised by them over alien subjects or " citizens resident abroad or over their property there sit- " uated. This doctrine may be said to be axiomatic, and " courts in England have felt it so obligatory upon them " that where general terms, used in Acts of Parliament, " seem to contravene it, they have narrowed the construc- " tion to avoid that conclusion." P. 334.

Hagan vs. Reclamation District, 111 U. S. 701. "The " Court repeats with approval the principles announced in " State Tax on Foreign Held Bonds, 15 Wallace, 300-319."

Erie Railroad vs. Pa., 153 United States, 628, *held:*

" That the Commonwealth of Pennsylvania cannot, consist-
" ently with the Constitution of the United States,
" impose upon the New York, Lake Erie and Western R.
" R. Co., the duty, when paying, in the City of New York,
" the interest due upon script, bonds, or certificates of in-
" debtedness, held by residents of Pennsylvania, of deduct-
" ing from the interest so paid, the amount assessed upon
" bonds and moneyed capital in the hands of such residents
" of Pennsylvania." *Syllabus, p. 629.*

The Court said: "The money in the hands of the Com-
" pany in New York to be applied by it to the payment of
" interest, which, by the terms of the contract, is payable
" in New York and not elsewhere, is property beyond the
" jurisdiction of Pennsylvania; and Pennsylvania is without
" power to say how the corporation holding such money in
" another State shall apply it, to inflict a penalty upon it
" for not applying it as directed by its Statutes; and
" specially may not Pennsylvania, directly or indirectly,
" interpose between the corporation and its creditors, and
" forbid it to perform its contract with creditors according
" to its terms and according to the law of the place of per-
" formance. No principle is better settled than the power
" of a State, even its power of taxation in respect to prop-
" erty is limited to such as is within its jurisdiction. **State**
" **Tax on Foreign Held Bonds, 15 Wall. 300-319; Railroad**
" **Company vs, Jackson, 7 Wall. 262; St. Louis vs. Ferry**
" **Company, 11 Wallace, 423; Delaware R. R. Tax, 18 Wall.**
" **206.**" P. 646.

Dewey vs. Desmoines, 173 U. S. 193. In this case the Statutes of Iowa authorized a personal judgment against the owner for the paving of a street abutting upon his property; and a personal judgment was obtained against him for the amount of such assessment. This Court reversed the Decree of the Supreme Court maintaining the validity of such judgment.

The Court, referring with approval to its former adjudications, said:

"The power to tax is, however, limited to persons, prop-
" erty, and business within the State, and it cannot reach
" the person of a non-resident. A State can no more sub-
" ject to its power a single person or a single article of
" property whose residence or legal situs is in another State,
" than it can subject all the citizens or all the property of
" such other State to its power. These are elementary
" propositions, but they are referred to only for the purpose
" of pointing out that a Statute imposing a personal lia-
" bility upon a non-resident to pay such an assessment as
" this, oversteps the sovereign power of a State." P. 204.

Louisville and Jeffersonville Ferry Co. vs. Kentucky, 188 U. S. p. 385: "A franchise granted by the proper au-
" thorities of Indiana, for maintaining a ferry across the
" Ohio River from the Indiana shore to the Kentucky shore,
" is an Indiana franchise, is an incorporeal hereditament
" derived from, and having its legal situs for the purposes
" of taxation in Indiana. The taxation of the Indiana
" franchise by Kentucky would amount to a deprivation
" of property without due process of law, in violation of
" the provisions of the 14th Amendment." *Syllabus*, p. 385.

The Court said: "There is, in our judgment, no escape
" from the conclusion that Kentucky thus asserted its au-
" thority to tax a property right and incorporeal heredita-
" ment which has its situs in Indiana. While the mode,
" form and extent of taxation are, speaking generally,
" limited only by the wisdom of the Legislature, that power
" is limited by a principle inhering in the very nature of
" Constitutional Government, namely, that the taxes im-
" posed must have relation to a subject within the jurisdic-
" tion of the taxing Government." P. 396.

Railey vs. Assessors, 44 La. An. 765 (decided in 1892):
" 'The power of taxation, however vast in its character
" and searching in its extent, is necessarily limited to sub-
" jects within the jurisdiction of the State. These subjects
" are persons, property and business. Whatever form taxa-
" tion may assume, whether as duties, imposts, excises or

" licenses, it must relate to one of these subjects. It is not " possible to conceive any other, though as applied to them " the taxation may be exercised in a great variety of ways.' " 15 Wall. 300, 11 An. 268; 4 Woods, 206, 43 Maine, 497; " 11 N. Y. 563. 'Debts are not property. A non-resident " creditor of a city cannot be said to be, in virtue of the " debt which it owes him, a holder of property within its " limits.' Desty on Taxation, Vol. I, Par. 328; 96 U. S. " 432." P. 768.

II.

WHILE TANGIBLE PERSONAL PROPERTY, BY A FICTION OF LAW, HAS BEEN SAID TO FOLLOW THE DOMICILE OF ITS OWNER, IT MAY BE TAXED AT ITS ACTUAL "SITUS;" BUT IT HAS NEVER BEEN HELD THAT AN INCORPOREAL THING, A MERE ABSTRACTION, SUCH AS THE NAKED OBLIGATION TO PAY A DEBT, COULD BE SO TAXED. FOR AN INCORPOREAL THING, BEING AN ABSTRACTION, CAN HAVE NO "SITUS."

State Tax on Foreign Held Bonds, 15 Wallace, 300: "It is undoubtedly true that the actual *situs* of the per- " sonal property which has a visible and tangible exist- " ence, and not the domicile of its owner, will, in many " cases, determine the State in which it may be taxed. The " same thing is true of public securities consisting of State " bonds and bonds of municipal bodies and circulating " notes of banking institutions; the former *by general* " *usage have acquired the character of and are treated as prop-* " *erty in the place where they are found*, though removed " from the domicile of the owner; the latter are treated " and pass as money wherever they are; but other personal " property, consisting of bonds, mortgages and debts gen- " erally, has no *situs* independent of the domicile of the " owner, and certainly can have none where the instru- " ments, as in the present case, constituting the evidences of " debt, are not separated from the possession of the owners." P. 323.

MORTGAGES AND BONDS. NEGOTIABLE NOTES.

Kirtland vs. Hotchkiss, 100 U. S. 491. The Court cites with approval the case of *McCullough vs. State, 4 Wheaton, 428; St. Louis vs. Ferry Co., 11 Wallace, 423; State Tax on Foreign Held Bonds, 15 Wallace, 300,* and says:

"We perceive no reason to modify the principles announced in these cases or to question their soundness. They are fundamental and vital in the relations which, under the Constitution, exist between the United States and the several States. Upon their strict observance depends in no small degree the harmonious and successful working of our complex system of government, Federal and State. Plainly, therefore, our only duty is to inquire whether the Constitution prohibits a State from taxing in the hands of one of its resident citizens, a debt held by him upon a resident of another State, and evinced by the bond of the debtor, secured by a deed of trust or mortgage upon real estate situated in the State in which the debtor resides.

"The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the State imposing the tax. The debt is property in his hands, constituting a portion of his wealth upon which he is under the highest obligation, in common with his fellow-citizens of the same State, to contribute for the support of the government whose protection he enjoys.

"That debt, although a species of intangible property, may, for the purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the debt, for the purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois.

"The mortgage is but a security for the debt, and, as "held in State Tax on Foreign Held Bonds, the right of "the creditor to proceed against the property mortgaged, "upon a given contingency, to enforce by its sale the pay- "ment of his demand—has no locality independent of the "party in whom it resides. It may undoubtedly be taxed "by the State when held by a resident therein. The debt, "then, having its situs at the creditor's residence, both he "and it are, for the purposes of taxation, within the juris- "diction of the State." Pp. 497, 498 and 499.

Saving Society vs. Multnomah County, 169 U. S. 421:

"A statute of Oregon taxing mortgages of lands in that "State to the mortgagees in the county where the land "lies, does not, as applied to mortgages owned by citizens "of other States, and in their possession outside of the "State of Oregon, contravene the 14th Amendment of the "Constitution of the United States." Syllabus, p. 421.

Citing the decisions of the Courts of Oregon, this Court said:

"Notwithstanding this, it has been held both by the "Supreme Court of the State and by the Circuit Court of "the United States for the District of Oregon, that the "State has the power to tax mortgages, though owned and "held by citizens and residents of other States, of lands in "Oregon." P. 426.

This Court, further, with approval, quotes from the decision of Judge Deady in **Dundee vs. School District, 10 Sawyer, 52,** as follows:

"A mortgage upon real property in this State, whether "considered as a conveyance of the same, giving the cred- "itor an interest in or right to the same, or merely a con- "tract giving him a lien thereon for his debt and the "power to enforce the payment thereof by the sale of the "premises, is a contract affecting real property in the "State, and dependent for its existence, maintenance and "enforcement, upon the laws and tribunals thereof, and

" may be taxed here as any other interest, right to or " power over land." P. 427.

This Court says: "The State may tax real estate mort- " gaged, as it may all other property within its jurisdic- " tion, at full value. It may do this either by taxing the " whole to the mortgagor, or by taxing to the mortgagee " the interest therein represented by the mortgage, and to " the mortgagor the remaining interest in the land. And " it may, for the purposes of taxation, either treat the " mortgage debt as personal property, to be taxed, like " other choses in action, to the creditor at his domicile; or " to the mortgagee's interest in the land as real estate to " be taxed to him, like other real property at its situs." P. 427.

" This Court has always held that a mortgage of real " estate made in good faith by a debtor to secure a private " debt is a conveyance of such an interest in the land as " will defeat the priority given to the United States by Act " of Congress in the distribution of the debtor's estate." P. 428.

Pullman Palace Car Company vs. Pennsylvania, 141 U. S. p. 18: "The Court affirmed a decision of the Supreme " Court of Pennsylvania, maintaining the validity of a tax " imposed upon the capital stock of the plaintiff engaged " in the transportation of freight or passengers within that " State, said capital having been taxed as the basis of " assessment, such proportion of its capital stock as the " number of miles of railroad over which its cars were run " within that State bore to the whole number of miles in " that and other States over which its cars are run."

The Court said: "A nation within whose territory *any* " *personal property is actually situated* has an entire dominion " over it while therein, in point of sovereignty and juris- " diction, as it has over immovable property situate therein."

" For the purpose of taxation, as has been repeatedly " affirmed by this Court, personal property may be sepa- " rated from its owner, and he may be taxed on its amount " at the place where it is, although not the place of his own

" domicile, and even if he is not a citizen or resident of " the State which imposes the tax." P. 22. (My italics).

" The tax on the capital of the corporation, on account of " its property within the State, is, in substance and effect, " a tax on that property." P. 25.

Mr. Justice Bradley, with whom concurred *Mr. Justice Field and Mr. Justice Harlan, dissenting*, said: " The State " can no more tax the capital stock of a foreign corporation " than it can tax the capital of a foreign person. Pennsyl- " vania cannot tax a citizen and resident of New York, " either for the whole or any portion of its general property " or capital. It can only tax such property of that citizen " as may be located and have a situs in Pennsylvania. " State Tax on Foreign Bonds, 15 Wall. 300. And it is " exactly the same with a foreign corporation. Its capital, " as such, is not taxable. Gloucester Ferry Co. vs. Penn- " sylvania, *qua supra*. To hold otherwise would lead to the " most oppressive and unjust proceedings. It would lead " to a course of spoliation and reprisals that would endanger " the harmony of the Union." P. 36.

A MORTGAGE, so far as taxation is concerned, is a mere *security*. Hence, the question of the situs of notes and bonds is generally held not to be affected by the fact that the paper was or was not secured by mortgage, or, if so secured, by the location of the mortgaged premises. *15 Wall. 300; 51 N. J. L. 140; 100 U. S. 491; 42 Conn. 426; 19 Am. Rep. 546; 12 Iowa, 539; 26 N. J. Law, 564; 68 Ind. 247; 3 Colo. 349.*

Some courts, however, proceeding on the theory that a *mortgage* is an *interest in land*, have held it taxable in the State where the land lies, although held by a non-resident. *11 Oregon, 67; 50 Am. Rep. 462; 91 Mich. 78; 1 Clarke Ch. N. Y. 42; 52 Pa. State, 140; 123 Pa. State, 594; 72 Pa. State, 72; 66 Pa. State, 73.*

The general rule is, that DEBTS FOLLOW THE PERSON OF THE CREDITOR, and are to be taxed at his domicile. *4 Woods (U. S.) 206; 38 Cal. 461; 42 Conn. 426; 19 Am. Rep. 546; 43 Ga. 336; 50 Ga. 387; 108 Ill. 113; 14 Ind. 354; 59 Md. 472; 26 Am. Rep. 87; 68 Md. 247; 54 Iowa, 57; 65 Iowa, 110; 4 Busch Ky. 135; 8 B. Monroe Ky. 1; 41 La. An. 645; 41 La. An. 1015; 44 La. An. 760; 50 Md. 354; 25 Ohio State, 10; 3 Mo. C. S. C. 374; 27 Gratt. Va. 354; 25 Cal. 601; 33 Ga. 113; 2 Oregon, 327; 13 S. W. Rep. 30; 75 Texas, 476.*

In the taxation of personal property, two inconsistent doctrines often come into conflict; the one, *mobilia sequuntur personam*, commanding that the property shall be taxed at the owner's domicile, on the theory that the personalty has no other *situs;* the other, that it shall be taxed like real property, where it is situated. Ordinarily, the first rule will prevail, and, as a general rule, personal property is taxable at the domicile of its owner. *Cooley on Taxation, 2 Ed. pp. 56-372, Burroughs on Taxation, Par. 40; 14 Ill. 163; 56 Am. Dec. 493; 12 Md. 464; 47 Conn. 477; 138 N. Y. 543; 10 Mass. 514; 17 Mass. 461; 4 Ed. Smith N. Y. 675; 34 N. J. Law, 45; 23 N. J. Law, 532; 24 N. J. Law, 56; 30 N. J. Law, 13; 11 N. Y. 565; 15 N. Y. 316; 122 Pa. State, 386; 14 Allen Mass. 366; 84 Iowa, 407; 17 Vermont, 609.*

In regard to assets evidenced by NEGOTIABLE BILLS, NOTES AND BONDS, there are two lines of decisions.

The view which is probably the more logical is, that the paper is mere evidence of indebtedness, and that the debt itself can have no actual *situs* wherever the paper may be; hence, the *situs*, in the eye of the law is, as in the case of ordinary debts, at the residence of the creditor. *131 Mass.*

24; 48 Ohio State, 648; 33 Iowa, 376; 16 Fed. Rep. 11; Cooley on Taxation, 2 Ed. p. 15; 15 Wall. 300; 30 La. An. 876; 31 Am. Rep. 232; 106 Ill. 25; 24 Pac. Rep. 182; 11 Sou. Rep. 393.

MONEY, while a mere medium of exchange, is, so far as taxation questions are concerned, a form of tangible personal property. It may be taxed at the owner's domicile, but is generally taxed where it is actually situated. *1 Nev. 397; 48 N. Y. 310; 2 McCrary (U. S.) 337; 44 La. An. 91; 66 How. Pr. New York, 190; 4 Blatchford, 263; Blackstone, Miller, 188 U. S. 187.*

LOUISIANA DECISIONS.

Meyer vs. Pleasant, Sheriff, 41 La. An. 645 (decided in 1889):

"Debts have their *situs* at the domicile of the creditor, "and they do not lose their *situs* because reduced to JUDG-"MENT at the domicile of the debtor."

The Court said:

"The tax collector affirmed the validity of the tax on the "ground that Section of *Act of 1880* directs that movable "property shall be assessed in the Parish where it is lo-"cated. This applies to tangible movables, but not to in-"corporeal rights generally, which follow the person of the "owner and are not susceptible of physical location. It is "well settled that the *situs* of a debt as property is at the "domicile of the creditor. 100 U. S. 496; 15 Wall. 300; "Cooley on Taxation, p. 15. A judgment is merely the "highest form of evidence of a debt. The Supreme Court "of the United States held that debts owing to foreign "creditors are not subject to taxation by a State, because "such a debt is a right personal to the creditor where he "resides, and the residence of his debtor is immaterial. "The fact that a foreign creditor had reduced his debt to a "judgment by proceedings necessary at the debtor's domi-

" cile could not subject the debt to taxation. We hold, " therefore, that the debt represented by this judgment is " not located in the Parish of Union, but has the same *situs* " after, as before, the judgment, namely, at the domicile of " the creditor. It is assessable and taxable only in the " Parish of Orleans, and as it forms part of the capital " and assets of the firm of V. & A. Meyer & Co., it has " presumably been assessed and taxed there." Pp. 646 and " 647.

Liverpool, etc. vs. Assessors, 44 La. An. 760 (decided in 1892):

" The issues are limited to all credits assessed for pre- " miums due."

" A debt to a non-resident of a State is not liable to be " taxed by a State in which he does not reside. His credits " are not within the State's jurisdiction. They are of no " value to the debtor. All the value there is in them be- " longs to the creditor, and is taxable at his domicile. " Cooley on Taxation, 2 Ed. p. 21; 15 Wall. 300; 11 Allen, " 268; 4 Woods, 206; 43 Maine, 497; 11 N. Y. 563; 7 " Minn. 198; 21 Vt. 152; 47 Conn. 477.

" All corporations are taxable on property within the State.

" Debts are not property when the creditor is not a resi- " dent of the State. 'We conclude,' says, Burroughs, p. 59, " 'that the situs of personal property for the purpose of " taxation depends in a great measure upon the nature of " the property.'

" As to debts, a number of trustworthy decisions hold " that 'corporations, it is also conceded, may be taxed like " natural persons on their property and business, but debts " owing to foreign *creditors, either corporations or individ-* " *uals, are not the subject of taxation.*'

" 'The creditor *cannot* be taxed, because he is not within " the jurisdiction, and the debts *cannot* be taxed in the " debtor's hands through any fiction of the law, which is to " treat them as being, for this purpose, the property of the " debtors. *They are not the property of the debtors in any*

" *sense*. They are the obligations of the debtor, and only " possess value in the hands of the creditors. *With them* " *they are property*, but to call them property in the hands " of the debtors is simply a misuse of terms. 27 Gratt. " 344; 11 An. 268; 67 Ga. 489; 22 Fed. Rep. 602; 106, Ill. " 25; 100 U. S, 496.

" The mere right of a foreign creditor to receive from " his debtor within the State the payment of his demand " cannot be subjected to taxation within the State. Cooley " on Taxation, p. 15." P. 764.

Railey vs. Assessors, 44 La. An. 765 (decided in 1892): " The question for our consideration is as to the possibility " of taxing credits. The judgment of the District Court " maintained plaintiff's demand, and ordered the said as- " sessment to be cancelled. The rule, *mobilia personam se-* " *quuntur*, this Court held that: debts and other incor- " poreal rights, when treated as property for the purposes " of taxation, can be assessed only at the domicile or place " of residence of the creditor, without regard to the domicile " of the debtor. The principle applies to corporations as " well as to natural persons. Hence, debts, due to a for- " eign corporation by residents of this State, cannot be taxed " in this State. *41 An. 1015*; *41 An. 645*." P. 768. These decisions settle the point.

" But counsel for the City claims that these decisions " apply merely the general rules to the title of movable " property following the owner in the absence of the Statute " of the State fixing the situs otherwise; and that they do " not apply in this case, because the Statute No. 106 of " 1890, under which the taxes claimed are levied, specially " authorized the taxation of 'credits' held by non-residents, " and that rules of comity must yield to express law. " This is sound and conclusive in so far as relates to *cor-* " *poreal movables* belonging to non-residents. (My italics).

" Such movables are subject to taxation. An exception " necessarily arises in so far as relates to certain incorporeal " rights.

" Of the enumeration on the assessment roll, everything " is thus eliminated, except the item of *'credits.'* And the

" evidence shows that these credits consist of nothing but " debts due the Companies for uncollected premiums. *The " simple question presented to us was whether the State pos- " sessed jurisdictional power to tax such mere credits due to for- " eign creditors.* (My italics).

" There is no doubt of the legislative power to modify " the rule of comity, *mobilia personam sequuntur*, in many " respects.

" Movables having an actual *situs* in the State may be " taxed there, though the owner be domiciled elsewhere. " Even debts may assume such concrete form in the evi- " dences thereof, that they may be similarly subjected when " such evidences are situated in the State, as in the case of " bank notes, public securities, and, possibly, of negotiable " promissory notes, bills of exchange or bonds.

" But as to mere ordinary debts, reduced to no such con- " crete forms, they are not capable of acquiring any situs dis- " tinct from the domicile of the creditor, and no legislative " power exists to change that situs so far as non-resident " creditors are concerned. As said by the Supreme Court " of the United States: 'To call debts property of the " debtors is simply to misuse terms.' All the property " there can be in the nature of things, in debts, belongs to " the creditors to whom they are payable, and follows their " domicile wherever that may be. The debts can have no " locality separate from the parties to whom they are due. " 15 Wall. 300.

"A State has no more power to subject such debts due to " foreign creditors to taxation than it would have to tax " the corporeal movables situated at the foreign domicile." P. 769.

Clason & Company vs. City, 46 La. An., p. 1 (decided in 1894):

" Moneys standing to the credit of a non-resident firm " on the books of a New Orleans bank are not taxable. " The relations between a bank and its customers are " those of creditor and debtor. The moneys are not spe- " cially deposited to be identically restored. They go into

" the bank's money with the understanding that they " might be used, and should be the basis of items of a " debit and credit account. Such a debt is not distin- " guishable from those due to the foreign firm from any " other cause." *Syllabus*, p. 1.

Referring to the method in which plaintiff conducts the business of purchasing cotton by an agent in New Orleans, the Court states the facts:

" When he gets an order to purchase, he pays for it " when shipped. He draws on the house in Manchester " and gets the money from the bank. He delivers a bill " of lading and against that bill he draws a bill of ex- " change which he deposits in bank and draws a cheque " to pay for the cotton. He sells exchange to the bank " (sometimes to parties other than the bank), which gives " him a cheque for the exchange. This he deposits in " bank and the firm is given credit for the amount against " which he checks. The question submitted to us is " whether these amounts standing in bank to the credit of " plaintiffs are subject to taxation." P. 4.

" We cannot distinguish between the debt due to the " plaintiff by a bank as arising from a deposit to the credit " of the firm in money and that due to it from any other " cause." P. 5.

Parker, Tax Collector, vs. Strauss, 49 La. An. 1173 (decided in 1897):

" The revenue act, in entire accordance with the con- " ceded extent of the taxing power, taxes the movable " property of the foreigner. We cannot hold that prop- " erty thus liable to taxation is exempted, because, for " convenience, it is deposited in bank and checked on by " the owner. It would be a strain to apply to the depos- " ited cash the exemption from taxation accorded to debts " in the ordinary significance due to the foreign creditor." P. 1175.

State ex rel. vs. Board of Assessors, 47 La. An. 1544 (decided in 1895):

"The rule established in Liverpool, London and Globe " Ins. Co., 44 An. 760, is that *credits* due to a non-resident " were assessable and taxable at the domicile of the owner; " but that decision made an exception in favor of *tangible* " *assets* and other personal property, and held that the " same were assessable at their actual situs." (My italics).

"But it has never been decided that tangible personal " property could not be assessed at the owner's domicile, " notwithstanding that its actual situs was abroad, in some " other State or country. State Tax on Foreign Held Bonds, " 15 Wall. 300, is not to the contrary; for, in that case, the " Court says: 'It is undoubtedly true that the actual situs " of personal property which has a visible existence, and " not the domicile of the owner, will, *in many cases*, deter- " mine the State in which it may be taxed. The same is " true of public securities consisting of State and Munici- " pal Bonds and *circulating* notes of banks. These by " general usage have acquired the character of and are " treated as property in the place where they are found, " though removed from the domicile of the owner.' But " that decision and others of like character only apply to " bonds and other *circulating* notes which are operated in " market and are bought and sold.

"This is the exact illustration that is given by Mr. Bur- " roughs, for he says that, when a person who resides in " one State has an agent in another State who loans or in- " vests money for him, on notes or other evidences of debt, " and then reinvests the proceeds of the loan in the same " State, such notes or evidences of debt are taxable in the " latter State. Burroughs on Taxation, p. 60.

"But such is not the situation of the bonds of the relator. " They are owned by the Insurance Company, but they are " not in circulation. They were doubtless purchased and " placed on deposit in the Treasury of the State of Georgia, " as an indemnity to secure the fulfillment of the company's " risk in that State. These are taxable assets here." P. 1545.

Comptoir National d'Escompte de Paris vs. Board of Assessors, 52 La. An. 1319 (decided in 1900): "Non-nego-

" tiable notes representing loans in Louisiana, made by the " agent of a corporation doing business therein, when kept " within the State by the agent may be subjected to taxa- " tion by the Law of the State in which they are held." *Syllabus, p. 1319.*

The Court referring to the case of *City vs. Stempel, 175 U. S. 309*, says: " The syllabus of that decision declares " that notes and mortgages, the owner of which is domiciled " in another State, when they are kept within the State by " an agent, may be subjected to taxation by the law of the " State in which they are held. A non-negotiable note is " certainly sufficiently concrete in form to be made an ob- " ject of taxation. The fact that it may be less valuable " in fact than it appears on its face may affect the estimate " to be placed upon it for assessment purposes, but that " question is something other than the question of its being " a proper object of taxation.

"We think that the facts in this case bring it squarely " under the decisions in *Bluefields Banana Co., 49 An. 43;* " *Parker vs. Strauss, 49 An. 1173.*

"In the former case this Court, referring to the corpora- " tion claiming exemption, said:

" The foreign corporation had an agent here, where it re- " ceived and where it sold fruit and received the price for " the same. Part of the proceeds were withheld in the hands " of the agents for the purposes incidental to the prosecu- " tion of its business, and part deposited to the credit of " the Company, subject to the cheque of its local agent, " also for the prosecution of its business here, and for such " other purposes as the Company might direct it to be ap- " plied to." P. 1332.

" There is no parallelism between this case and that of " *Clason vs. City, 46 An. 1.* The facts of the case are en- " tirely different. *Here the foreign corporation is engaged in* " *a regular business investing and reinvesting the moneys* " *through an agent in this State.*" (My italics.)

" In the other case, *Clason and Company* were merely " the agents of an English firm for the purchase of cotton " to be shipped by them, at once, to the firm in Europe.

" Instead of paying for this cotton by means of bills of " exchange transferred to the vendors, which they, them- " selves, would have cashed, the agents, for convenience, " had the bills cashed, deposited the amount in bank and " drew against the funds in favor of the sellers." P. 1332.

Thus, your Honors will see that no court has decided that a mere obligation, not in *concrete form*, is liable to taxation away from the domicile of the creditor. In the *Comptoir's* case, the Supreme Court of Louisiana maintained the validity of a tax upon *non-negotiable notes*, but it rested the decision upon the fact found by it, outside of the record, that the money which they represented was regularly retained here by its agent *for the purpose of investment and re-investment.*

The Court overlooked the fact, established clearly by its record, that its fluctuating surplus of $20,000, fixed by the lower court, to the satisfaction of opposing counsel, was the only sum thus employed, and was the sum on which the Comptoir paid its tax. In that case, as in the instant case, it was conclusively proven that all sums in excess of that amount were never retained here, but were immediately invested in foreign exchange. Of course, where the loan was represented by a draft of borrower with bill of lading attached, *the draft and debt were paid in Europe.* And 80% of its loans are of this character (T. p. 26). Of the remaining 20% of loans made, say, on warehouse receipts, and paid in New Orleans, its loans when thus paid were immediately invested in foreign exchange. There was necessarily an average fluctuating balance which, however, the Court fixed at $20,000, by a final judgment, never appealed from and acquiesced in as correct.

III.

OF COURSE, IN PAYING THE TAX UPON THIS AVERAGE BALANCE IN NEW ORLEANS, THE COMPTOIR RECOGNIZES THE CORRECTNESS OF THE DECISIONS THAT MONEY SENT BY A FOREIGN CREDITOR TO ITS LOCAL AGENT IN ANOTHER STATE, TO BE THERE EMPLOYED IN BUSINESS AND RETAINED THERE FOR INVESTMENT, UNDER THE PROTECTION OF ITS LAWS, IS LIABLE TO BE TAXED. UNDER SUCH CONDITIONS THE RULE, MOBILIA SEQUUNTUR PERSONAM, DOES NOT APPLY.

New Orleans vs. Stempel, 175 U. S. 309: "It is well "settled that bank bills and municipal bonds are in such "concrete tangible form that they are subject to taxa- "tion where found, irrespective of the domicile of the "owner; they are subject to levy and sale on execution and "to seizure and delivery under replevin. Notes and mort- "gages are of the same nature." *Syllabus, 310.*

The Court said: "It appears that these credits were "evidenced by notes legally secured by mortgages on real "estate in New Orleans, that these notes and mortgages "were in the City of New Orleans, in possession of an agent "of the plaintiff, who collected the interest and principal "as it became due, and deposited the same in a bank in "New Orleans, to the credit of the plaintiff. The question, "therefore, is distinctly presented whether, because the "owners were domiciled in the City of New York, the "money so deposited in a bank within the limits of the "State of Louisiana, and the notes secured by mortgages, "situated and held as above described, were free from tax "in the latter State. Of course, there must be statutory "warrant for such taxation, for if the Legislature omits any "property from the list of taxables, the Courts are not au- "thorized to correct the omission and adjudge the omitted "property to be subject to taxation." P. 312.

After reviewing the recent decisions of the Supreme Court of Louisiana, this Court proceeds: "From this re-

" view of the decisions of the Supreme Court of the State, " it is obvious that moneys, such as those referred to, col- " lected as interest and principal of notes, mortgages and " other securities kept within the State and deposited in " one of the banks of the State for their use or reinvestment, " are taxable under the Act of 1890. They are property " arising from the business done in the State; they were " tangible property when received by the agent of the " plaintiff, and as such, subject to taxation; and their taxa- " bility was not, as the Court holds, lost by their mere deposit " in a bank. It is true that, when deposited, the moneys " became the property of the bank, and for most purposes " the relation of debtor and creditor arose between the bank " and the depositor; but as evidently the moneys were to " be kept in the State for reinvestment or other use, they " remain still subject to taxation, according to the decision " in 49 La. An. 43.

" When the question is whether property is exempt from " taxation, and that exemption depends alone on a true " construction of the Statute of a State, the Federal Court " should be slow to declare any exemption in advance of " any decision by the courts of the State. The rule in such " a case is that the Federal courts, follow the construction " placed upon the Statute by the State courts, and in ad- " vance of such construction, they should not declare pro- " perty beyond the scope of the Statute and exempt from " taxation, unless it is clear that such is the fact. In other " words, they should not release any property within the " State from its liability to State taxation unless it is obvi- " ous that the Statutes of the State warrant such exemption, " or unless the mandates of the Federal Constitution com- " pel it." P. 316.

" If we look to the decisions of other States, we find the " frequent ruling that when an indebtedness has taken " a concrete form and becomes evidenced by notes, bills, " mortgage or other written instrument, and that writ- " ten instrument evidencing the indebtedness is left within " the State in the hands of an agent of a non-resident " owner, to be by him used for the purposes of collection

" and deposit or reinvestment within the State, its taxable " situs is in the State." P. 347.

The Court quotes from *Catlen vs Hull, 21 Vermont, 152*, as follows: "We are not only satisfied that this method of " taxation is well founded in principle and upon authority, " but we think it entirely just and equitable that, if per- " sons residing abroad bring their property and invest it " in this State for the purpose of deriving profit from its " use and employment here, and thus avail themselves of " the benefits and advantages of our laws for the protection " of their property, the property should yield its due pro- " portion towards the support of the government which " thus protects it." P. 317.

And again, the Court quotes from *Goldgart vs. People, 106 Ill. 25:* "If the owner is absent, but the credits are in " fact here, in the hands of an agent, for renewal or collec- " tion, with the view of reloaning the money by the agent " as a permanent business, they have a situs here for the " purpose of taxation and there is jurisdiction over the " thing." P. 318.

And again, the Court quotes from *State Tax on Foreign Held Bonds, 15 Wallace, 300:* "But other personal property, " consisting of bonds, mortgages and debts generally, has " no situs independent of the domicile of the owner, and " certainly can have none where the instruments, as in the " present case, constituting the evidences of debt, are not " separated from the possession of the owners."

" This last sentence, properly construed, is not to be " taken as a denial of the power of the Legislature to estab- " lish an independent situs for bonds and mortgages, where " those properties are not in the possession of the owner, " but simply that the fiction of law, so often referred to, de- " clares the situs to be that of the domicile of the owner, " a declaration which the Legislature has no power to dis- " turb when in fact they are in his possession." P. 320.

"It is well settled that bank bills and municipal bonds " are in such concrete tangible form that they are subject " to taxation where found, irrespective of the domicile of

" the owner; are subject to levy and sale on execution, and " to seizure and delivery under replevin; and yet, they are " but promises to pay and evidences of existing indebted- " ness.

"Notes and mortgages are of the same nature; and while " they may not have become so, are generally recognized " as tangible personal property; yet, they have such a con- " crete form that we see no reason why a State may not " declare that if found within its limits, they shall be " subject to taxation." P. 322.

Bristol vs. Washington County, 177 United States, 133.

" The personal property of a citizen of and resident of one " State invested in bonds and mortgages in another State, is " subject to taxation in the latter State." Syllabus, p. 133.

The Court said: " Our jurisdiction by direct appeal is " invoked on the ground that the application of the Con- " stitution of the United States is involved, and that a " law of the State is claimed to be in contravention of the " Constitution of the United States."

" The objections of the executor to the allowance of the " claim and his answer put forward the deprivation of " property without due process of law; the abridgment of " privileges and immunities of citizens of the United States; " and the denial of the equal protection of the laws, as the " violations of constitutional safeguards relied on." P. 139.

The Court said, quoting *In Re Jefferson, 35 Minn. 215:* " Thus corporeal personal property is conceded to be taxable " at the place where it is actually situated. A credit which " cannot be regarded as situated in a place merely because " the debtor resides there, must usually be considered as " having its situs where it is owned, at the domicile of the " creditor. The creditor, however, may give it a business " situs elsewhere, as where he places it in the hands of an " agent for collection or renewal, with a view to reloaning " the money and keeping it invested as a permanent busi- " ness." P. 144.

And this Court, referring to the notes of Mrs. Bristol, sought to be taxed, said: " But these notes were payable, " as before, at the office of the Agent in Minnesota; the

" mortgages securing the notes were retained by the agents, " and the notes were returned to the agents from time to " time, whenever required by them for the purpose of re- " newal, collection or foreclosure of securities. The agents " continued to collect the money due on the notes, and to " make loans in the name of Mrs. Bristol, sometimes under " her husband's direction, but generally on their own " judgment; and they remitted money to Mrs. Bristol " whenever she called for the same; while what was not re- " ceived by her was invested in new loans." P. 143.

"*In New Orleans vs. Stempel, 175 U. S. 309*, certain taxes " were levied on money on deposit, and also on money " loaned on interest, credits and bills receivable, and it was " held by this Court that the Statutes of Louisiana, as in- " terpreted by the Courts of that State, in authorizing such " assessment, did not violate the Constitution of the United " States. There the money, notes and evidences, were in " fact in Louisiana, although the owners resided elsewhere. " Still under the circumstances of the case before us, we " think, as we have said, that the mere sending of the notes " to New York and the revocation of the power of attorney " did not take these investments out of the rule." P. 144.

Bluefields Banana Company vs. Board of Assessors, 49 La. An. 43 (decided in 1897):

" A foreign corporation has an agent here where it " receives and where it sells fruit and receives the paper for " the same. Part of the proceeds were withheld in the " hands of the agents for the purposes incidental to the " prosecution of its business and part deposited to the credit " of the Company, subject to the cheque of its local agent, " for the prosecution of its business here and for such " purposes as the Company might direct it to be applied to. " The Company transacts business in New Orleans, pre- " cisely as do resident business men and firms.

" *Held:* An assessment of the cash in bank of said cor- " poration is proper and warranted by the provisions of " Act 106 of 1890, an act to provide an annual revenue for " the State. The rule, *mobilia sequuntur personam*, is a fic-

" tion of the law, not resting, of itself, upon any constitu-
" tional foundation and which gives away before express
" law." *Syllabus*, p. 43.

Referring to the Clason case, the Court said: " If
" foreign merchants were subjected to taxation on moneys
" sent here simply for the payment of the price of property
" bought for immediate export, some of which, in all pro-
" bability, merely passed *in transitu* through the State for
" shipment, and some of which presumptively has been al-
" ready taxed, it is very obvious that the trade of the
" City of New Orleans would be very seriously and inju-
" riously affected unless the parties, by a mere shifting of
" the mode of doing business and making payments should
" avoid the tax.

" The Court did not think it was justified in assuming
" that it was the intention of the Legislature (even if it
" were authorized so to do) that moneys in bank deposited
" here for the special purpose of paying for cotton bought
" for immediate export to Europe should be taxed." P. 48.

In **Blackstone vs. Miller, 188 U. S. p. 189**: " Where a de-
" posit made by a citizen of Illinois in a Trust Company in
" the City of New York remains there fourteen months, the
" property is delayed within the jurisdiction of New York
" long enough to justify the finding of the State Court that
" it was not *in transitu* in such a sense as to withdraw it from
" the power of the State if it were otherwise taxable, even
" though the depositor intended to withdraw the funds for
" investment.

" Under the laws of New York, such deposit is subject to
" the transfer tax, notwithstanding that the whole succes-
" sion had been taxed in Illinois, including this deposit."
Syllabus, p. 189.

" The deposit in question represented the proceeds of
" railroad stock sold to a syndicate and handed to the Trust
" Company, which, by arrangement with the Testator, held
" the proceeds subject to his order, paying interest in the
" meantime." P. 202.

" It is probable, of course, that he did not intend to leave

" the fund there forever and that he was looking out for " investments, but he had not found them when he died. " The tax is levied under a Statute imposing a tax 'upon " the transfer of any property real or personal.'" P. 203.

" In view of the State decisions, it must be assumed that " the New York Statute is intended to reach the transfer " of this property if it can be reached. *New Orleans vs.* " *Stempel, 175 U. S. 309, 316; Morley vs. Lake Shore & Mich-* " *igan Southern Railway Co. 146 U. S. 162, 166.* We also " must take it to have been found that the property was not " *in transitu* in such a sense as to withdraw it from the " power of the State, if otherwise the right to tax the trans- " fer belonged to the State. The property was delayed " within the jurisdiction of New York an indefinite time, " which had lasted for more than a year, so that this find- " ing at least was justified. *Kelly vs. Rhoads, ante p. 1, and* " *Diamond Match Co. vs. Village of Ontonagon, ante p. 84.*" P. 203.

" The question then is narrowed to whether a distinction " is to be taken between tangible chattels and the deposit " in this case. There is no doubt that courts in New York " and elsewhere have been loath to recognize a distinction " for taxing purposes between what commonly is called " money in the bank and actual coin in the pocket. The " practical similarity more or less has obliterated the literal " difference." P. 205.

"Power over the person of the debtor confers jurisdiction, " we repeat. And this being so, we perceive no better " reason for denying the right of New York to impose a " succession tax on debts owed by its citizens than upon " tangible chattels found within the State at the time of " the death. The maxim, *mobilia sequuntur personam,* " has no more truth in the one case than in the other. " When logic and the policy of a State conflict with a " fiction due to historical tradition, the fiction must give " way.

"There is no conflict between our views and the point " decided in the case reported under the name of State

" Tax on Foreign Held Bonds, 15 Wall. 300. The taxation " in that case was on the interest on bonds held out of the " State. Bonds and negotiable instruments are more than " merely evidences of debt. The debt is inseparable from " the paper which declares and constitutes it by a tradi- " tion which comes down from more archaic conditions." P. 206.

Walker vs. Jack, 88 Fed. Reporter, 580. "The case be- " fore the Court was that of the attempted taxation of an " itinerant peddler, a non-resident of Ohio, who owned " notes secured by mortgages on land in Butler County, " Ohio, who visited that country, each year, to collect in- " terest and as much of the principal as was due, brought " the notes and mortgages with him into the State and " took them away with him when he left it. It was held " that the notes were not subject to taxation, because he " had no resident agent hold the notes for him." P. 580.

"Where a resident of one State has exclusive control and " management of money, FOR INVESTMENT of foreign capi- " talists, some of which is invested in his State, and the " securities are made and held by him in his own name in " such State, they are taxable in that STATE." *Hutchinson " vs. Board of Equalization, 66 Iowa, 35.*

" If the negotiable notes, bills or bonds in question ARE " IN THE HANDS OF AN AGENT, they can probably be taxed " at the agent's residence, as being property in an agent's " possession, and, hence, coming under the general rule " which governs such property. The agent must, however, " be authorized to do some act in reference to the negoti- " able paper. If the owner keeps exclusive control of it " it is still in his possession.

"In other words, there must be a *bona fide* agency. *35 " Minn. 215; 48 N. Y. 390; 21 Vt. 152; 87 N. C. 122; 47 " Mo. 594; 1 Clark Ch. N. Y. 42; 19 Neb. 50; 15 Kansas, 68; " 19 Wall. U. S. 490: 8 Kansas 565; 40 Ill. 197; 112 Ill. " 272 85 N. Y. 369; 80 N. Y. 576.*

IV.

A FOREIGN CORPORATION STANDS UPON THE SAME FOOTING AS AN INDIVIDUAL IN RESPECT TO ITS CREDITS ARISING FROM OBLIGATIONS INCURRED IN ANOTHER JURISDICTION, NOR DOES IT BY SUCH LOANS BRING ITS ENTIRE CAPITAL INTO THAT JURISDICTION.

Liverpool, Etc., vs. Assessors, 44 La. An. 760 (decided in 1892):

"Instead of carrying on business through a personal "agency, the Liverpool, London and Globe Insurance Co. "has a Board of Directors and Secretary appointed by "itself. The business carried on by this board does not "have the effect of localizing the company itself to a "greater extent than if the business were conducted by an "agency not organized under a board.

"The premiums of foreign companies are all collected "through local agencies, and the losses are adjusted by "these agencies.

"Whether represented by a board of their selection or "by agents, they remain foreign companies, and in so far "as relates to residence the same rule applies.

"The companies are the owners of the assets, payment "of losses, made here in cash or by drafts sent by the home "companies, do not change the status in so far as relates "to a business residence." P. 763.

Gloucester Ferry Company vs. Pennsylvania, 114 U. S. 196:

This Court cited, with approval, *St. Louis vs. Ferry Company, 11 Wall. 423, and Railroad Co. vs. Pa., 15 Wall. 300*, and then stating that the Supreme Court of Pennsylvania in the case of Commonwealth vs. Standard Oil Co., 101 Pa. State, 119, had decided, "that the position of "the Commonwealth that a foreign corporation entering "the State to do business, brought its entire capital, was "ingenious, but unsound; that it was a fundamental

" principle that, in order to be taxed, the person must have " a domicile in the State, and the thing must have a *situs* " therein; that persons and property *in transitu* could not " be taxed; that the domicile of a corporation was in the " State of its origin, and it could not emigrate to another " sovereign; that the domicile of the Standard Oil Com- " pany was in Ohio, and, when it sent its agents in the " State to transact business, it no more entered the State " in point of fact than any other foreign corporation, firm " or individual, who sent an agent there to open an office " or branch house, nor brought its capital there construct- " ively; that it would be as reasonable to assume that a " business firm in Ohio brought its entire capital there " because it sent its agent to establish a branch of its busi- " ness, as to hold that the Standard Oil Company, by em- " ploying certain persons in the State to transact a portion " of its business, thereby brought all of its property or cap- " ital stock within the jurisdiction of the State; that there " was neither reason nor authority for such a proposition; " that the company was taxable only to the extent that it " brought its property within the State; and that its cap- " ital stock, as mentioned in the Act of the Legislature, " must be construed to mean so much of the capital stock " as was measured by the property actually brought within " the State by the company in the transaction of its busi- " ness.

"The Justice, who delivered the opinion of the Court, " said, speaking for himself, that he conceded the power " of the Commonwealth to exclude foreign corporations " altogether from her borders or to impose a license tax so " heavy as to amount to the same thing; but he denied, " great and searching as her taxing power is, that she " could tax either persons or property not within her juris- " diction. 'A foreign corporation,' he said, 'has no domi- " cile here and can have none; hence it cannot be said to " draw to itself the constructive possession of its property " located elsewhere. There are a large number of foreign " insurance companies doing business here under a license " from the State. Some of them have a very large capital.

" It is usually invested at the domicile of the company. If " the position of the Commonwealth is correct, she can tax " the entire property of the Royal Insurance Company, " although the same is located almost wholly in England, " or the assets of the New York Mutual, located in New " York.' And, thereupon, this Court held: 'Under this " decision there is no property held by the Gloucester " Ferry Company which can be the subject of taxation in " Pennsylvania, except the lease of the wharf in that " State.'" Pp. 209-210.

I submit that, except with respect to the fluctuating balance of $20,000, all the money loaned by the Comptoir, obtained by the sale of exchange, handed, as obtained, to the borrower, or furnished by permitting him to draw on Europe, could not be considered as money in the possession of the Comptoir. The most that could be said of it is that it was essentially an abstraction *in transit* through the State.

V.

WHILE THE STATE HAS NOT THE POWER TO LOCALIZE AN ABSTRACT CREDIT, IT MAY TAX TANGIBLE PERSONAL PROPERTY AT THE PLACE OF ITS LOCATION AWAY FROM THE DOMICILE OF ITS CREDITORS.

TANGIBLE PERSONAL PROPERTY is assessed sometimes at the domicile of the owner; sometimes at the place where it is situated. *25 Cal. 30; 39 Cal. 112; 21 Ind. 335; 27 Ind. 288; 92 Ind. 222; 26 Ill. 300; 79 Am. Dec. 377; 53 Ill. 45; 80 Ky. 489; 3 Md. 259; 16 Gray, Mass. 292; 60 Miss. 142; 15 N. J. Law, 320; 23 N. J. Law, 517; 17 Nev. 383; 7 Rhode Island, 317; 2 Spears, S. C. 719; 14 B. Monroe, Ky. 521; 91 Ala. 398; 114 U. S. 622.*

THE STATE may, however, and often does, make it tax-

able at its actual *situs*. *Dillon on Municipal Corporations, 4 Ed. Par. 786; Welty, Assessments, Par. 34; 26 Ill. 300; 79 Am. Dec. 377; 23 N. J. L. 517; 23 N. Y. 224; 51 Barb. N. Y. 352.*

St. Louis Ferry Company, 11 Wall. 423: "In the eye of "the law, personal property, for most purposes, has no lo- "cality. *Mobilia sequuntur personam; immobilia situm. Mo- "bilia non habent sequelam.* In a qualified sense, it accom- "panies the owner wherever he goes, and he may deal with "it or dispose of it according to the law of his domicile. If "he dies intestate, that law, wheresoever the property "may be situate, governs its disposal and fixes the entries "and shares of the different and several distributees. But "this doctrine is not allowed to stand in the way of taxing "power in the locality where the property has its actual "situs and the requisite legislative jurisdiction exists, such "property is undoubtedly liable to taxation there in all "respects as if the proprietor were a resident of the same "locality." P. 430.

Tappan vs. Merchants National Bank, 19 Wall. 490: "The power of taxation by any State is limited to persons, "property or business within its jurisdiction. Personal "property, in the absence of any law to the contrary, fol- "lows the person of the owner and has its situs at his dom- "icile. But, for the purpose of taxation, it may be sepa- "rated from him, and he may be taxed on its account at "the place where it is actually located. These are familiar "principles, and have often been acted upon in this Court "and in the Courts of Illinois. If a State has actual juris- "diction of the person of the owner, it operates directly "upon him. If he is absent, and it has jurisdiction of his "property, it operates upon him through his property.

"Shares of stock in National Banks are personal prop- "erty. They are made so by express terms by the Act of "Congress under which such banks are organized. They "are a species of personal property which is, in one sense,

" intangible and incorporeal. But the law which creates " them may separate them from the person of the owner " for the purposes of taxation, and give them a situs of their " own." P. 499.

De Vignier vs. City, 16 Federal Reporter, p. 12: "But in- " dependent of these legislative acts, the law must be that, " in the absence of any provisions of the Statute, which " had entered into and formed part of the contract, giving " the right to impose a tax, bonds or other obligations of a " city, which belonged to non-residents, could not be taxed " without impairing the force of the obligation itself; for, " as a rule of law, where there is no pre-existing legisla- " tion, they have no *situs* except that which is imputed by " the residence of the owner, and to attempt to tax outside " of that residence is to add to the qualities of personal " property that of having an artificial and forced location, " contrary to the settled rules which govern that class of " property."

United States vs. Bank, 8 Robinson La. Report, p. 262, (decided in 1844): "An assignment of property, real or per- " sonal, to the trustees for the benefit of the creditors of " the assignor, legal and valid by the laws of the State by " which it was made, and accompanied by delivery, will be " respected in this State." *Syllabus, p. 262.*

"In a few of the States, it has been held that a transfer " by assignment does not protect the property from attach- " ment, subsequently to the bankruptcy or insolvency; but " that, we think, a harsh interpretation of the law, and we " shall certainly not extend it to any one not a citizen of " our own State.

" We consider the doctrine as well settled now, that per- " sonal property has no locality, and that the laws of the " owner's domicile should, in all cases, determine the valid- " ity of the transfer or alienation, unless there is some posi- " tive or customary law of this country to the contrary." P. 414.

VI.

THE LEGISLATURE OF LOUISIANA HAS NEVER ATTEMPTED TO LOCALIZE MERE DEBTS DUE TO FOREIGN CREDITORS, FOR THE PURPOSE OF TAXATION, AND SUCH ATTEMPT, IF MADE, WOULD BE IN VIOLATION OF THE CONSTITUTION OF THE STATE.

Act of the Legislature 170, of 1898, is an act to provide an annual revenue to the State of Louisiana, etc.

" Section 1. Be it enacted by the General Assembly of " the State of Louisiana, that for the calendar year, A. D. " 1898, and for each succeeding calendar year, there are " hereby levied annual taxes amounting in the aggregate " to six mills on the dollar of the assessed value *of all prop-* " *erty situated within the State of Louisiana*, except such as is " expressly exempted from taxation by law, and the term " property, as herein used, means and includes * * * mov- " able property and chattels; all personal property * * * " the cash value of all judgments, debts and causes of ac- " tion; all rights, credits, bonds and securities of all kinds; " promissory notes, open accounts and other obligations; " all cash; all movable and immovable, corporeal and in- " corporeal, articles or things of value owned and held and " controlled within the State of Louisiana by any person in " any capacity whatsoever." Pp. 346, 347, 348. (My italics).

Section 7. "Be it further enacted, etc., that it is made " the duty of the tax assessors throughout the State to " place upon the assessment rolls or lists all property sub- " ject to taxation; * * * * and provided " further, that in assessing mercantile firms the true intent " and purpose of this Court shall be held to mean, the " placing of such value upon the stock in trade, all cash, " whether borrowed or not, moneyed interest, open ac- " counts, credits, etc., etc., as will represent in the aggregate " a fair average on the capital, both cash and credit, em- " ployed in the business of the party or parties to be

" assessed. *And this shall apply with equal force to any person* " *or persons representing in this State the business interests that* " *may claim a domicile elsewhere.* The intent and purpose " being that no non-resident, either by himself or through " an agent, shall transact business here without paying to " the State a corresponding tax with that exacted of its own " citizens and all bills receivable, obligations or credits " arising from the business done in this State, are hereby " declared assessable and within this State and at the " business domicile of the said non-resident, his agent or " representative." P. 350. (My italics).

The Legislature, in defining *what shall alone be taxed*, limits its taxation to property within the State.

The assessors are directed to assess foreign credits. But the Supreme Court of Louisiana has held and now holds that this *direction* only applies to *tangible* movables.

Liverpool vs. Assessors, 44 La. An. 760 (decided in 1892): " The proposition of counsel for defendant, that the Stat- " ute, *No. 106 of 1890*, under which the taxes here claimed " are levied, authorizes the taxation of credits held by non- " residents, is true.

"The Statute must be applied *in so far as relates to tan-* " *gible movables* belonging to non-residents, and as to them, " the general rule recognized by the comity of States, " *mobilia personam sequuntur*, must yield." (My italics).

"The Supreme Court of the United States on this " subject said: 'It is undoubtedly true that the " actual situs of personal property, which has a " visible and tangible existence, and not the domi- " cile of the owner, will, in many cases, determine the " State in which it may be taxed. The same thing is true " of public securities, consisting of State and Municipal " bonds and circulating notes of bank. These, by general " usage, have acquired the character of and are treated " as property in the place where they are found, though re- " moved from the domicile of the owner.' 15 Wall. 300. " We are dealing exclusively with the question of credits

" as assessed, and we hold, as decided in *41 An. 645, 1015*,
" that debts have their situs at the domicile of the creditor,
" because debts are property, and have a value which is in-
" separable from the creditor, and because the State has no
" greater power or jurisdiction to tax debts due to non-
" residents, creditors, than it has to tax any other personal
" property of such non-residents which is not situated in
" the State.

" The want of jurisdiction and power would render it
" useless to maintain the general rule applying to tangible
" movables." Pp. 764-765.

Act 106 of 1890, being the Annual Revenue Act for that year, is in *Section 1, p. 121, and Section 7, p. 124, and is in these provisions identical with Act 170 of 1898.*

Railey vs. Assessors, 44 La. An. 766. "An exception
" necessarily arises in so far as it relates to certain incor-
" poreal rights. As to these the tax laws have no extra-
" territorial effect." P. 768.

Liverpool, etc., vs. Assessors, 51 La. An. 1028 (decided in 1899):

"Taxes imposed upon a non-resident, whose property
" is not in the State, are null, as tax laws can have no
" extra-territorial effect. Debts due to a non-resident (still
" in non-concrete form) have their situs at the domicile of
" the creditor, and not at the domicile of the debtor." Syl-
" labus, 1028.

" The position of plaintiff is that credits due the com-
" pany for uncollected premiums are only taxable at the
" domicile of the company. This is controverted by the
" defendants, who urge, in substance, that the plaintiff's
" 'credits' fall within the grasp of the Revenue Law
" adopted in 1890, taxing the property of non-residents.
" *The whole theory of taxation under the Constitution of 1879,*
" *which governs in this cause, was based on the idea that the*
" *taxes were a property tax, and that the property assessed*

" *should be seized and sold to satisfy the taxes for which it* " *was assessed.*" (My italics).

"*The old method of recovering taxes by suit against the* " *debtor was abolished, and in its place the Constitution or-* " *dained that the property assessed should be seized and sold* " *for taxes. No great difficulty should now arise in assessing* " *and collecting the taxes on every item of property assessed in* " *the Revenue Act as subject to taxation.*

"*Now, as to debts, a mere debt, a promise to pay, has no* " *value within the limits of the State if it be due to one not* " *domiciled in the State.*

" Its value is at the domicile of the creditor, where it has " its situs. It is not property save at the domicile of the " creditor. *If assessed and sold for taxes, we are inclined to* " *think that the title would be greatly wanting in essentials to* " *perfect a legal title.*" P. 1029.

" There is no question in the case before us for decision " of cash, which is undeniably a tangible movable subject " of taxation." P. 1033.

" In a former law, *i. e.*, the law of 1886, all 'credits' were " subject to taxation, due by any 'person, company, asso- " ciation or corporation, *in and out of this State,*' and all " 'credits,' held, controlled or administered by 'agents' and " others in this State.

" Section 1 of the Act, as in the Act of 1890. The Reve- " enue Law enacted in 1888 is substantially the same, and " was not less broad than the Act of 1890.

" In the Law, requiring 'debts' owned by foreigners to be " assessed for taxation, as we take it, it was intended for all " such debts as are evidenced by note or by mortgage, or " that are in such other concrete form as to render it pos- " sible to subject them to taxation under the present laws. " No attempt has been made since the cited decisions were " rendered to localize the 'debts' 'open accounts,' such as " those upon which the taxes are now claimed.

" The State of Louisiana possesses jurisdiction for pur- " poses of taxation under present laws, over bonds owned " by corporations actively engaged in business within " the State, without regard to the owner's demand, also

" judgments; such bonds and judgments being in themselves property which may have a situs away from the " owner's domicile.

" As to 'open accounts' with a foreign company, for such " protection as it may offer, *the law to date has not localized " them so as to render it possible to assess them here and sell " them for taxes.* While it may be that a domicile in the " State as to those accounts may well be required as a condition precedent to the foreign company's business in the " State, they cannot, in our view, be assessed here as foreign 'credits' under the wording of the present law." P. 1033. (My Italics).

I therefore submit, that a receipt for money loaned on a foreign bill of exchange, with bill of lading attached, and which is immediately sent out of the State; or a cheque drawn on a credit opened in Paris or London, or for the value of a foreign bill of exchange sold, and which cheque merely evidences *not the debt, but only serves as a memorandum of the amount thereof,* are not credits in concrete form, but are open accounts which, under the laws of Louisiana, cannot be taxed.

I submit that the judgment appealed from should be affirmed and I so ask.

Respectfully submitted,

HARRY H. HALL,

Solicitor of Complainant.

OCTOBER, 1903.

14669

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

REPLY TO THE SUPPLEMENTAL BRIEF OF RESPONDENTS AND APPELLANTS.

It is a sufficient reply to that portion of Respondents' and Appellants' brief which contains in full the opinion of the Supreme Court of the State of Louisiana, in the case of the **Comptoir National vs. the Board of Assessors, 52 La. An., p. 1319,** to say:

1. That in that case the loans made by the Comptoir were advanced by notes which were retained in the City of New Orleans, and which, notwithstanding their non-nego-

tiability, the Court considered sufficiently representative of the credits due to the Comptoir to subject the same to taxation.

2. But even these non-negotiable notes were only subject to taxation, by reason of the fact found by the Court in that case, that the Comptoir was "engaged in a regular business, investing and reinvesting the moneys through an agent in this State."

As a matter of fact, the testimony which would seem to support this finding referred exclusively to the $20,000.00 fluctuating bank balance so employed by the Comptoir. Otherwise, the testimony was clear that no other funds were thus retained. Nor could they be so retained, for such retention would defeat the very purpose of the Comptoir's business, which was the selling and buying of exchange.

3. If, however, the statement of the fact by the Supreme Court of Louisiana is conclusive, then the answer to that finding is, that the business, during the year 1901, for which these taxes were assessed, was otherwise conducted; as *this record* shows clearly that, apart from the $20,000.00 of fluctuating balance, none of the funds of the Comptoir are kept in Louisiana for reinvestment.

In a former proceeding, Breton had stated that he *had occasionally* advanced money on City or State bonds. This statement was not understood by counsel to either refer to the business habitually done nor to the business being done at the time covered by said suit; for the entire examination and cross-examination of this witness, thereafter, referred exclusively to the warehouse receipts and bills of lading, showing money advanced on exports.

To determine this issue of fact, it is hardly necessary to go beyond the report of the Special Master. Counsel states, on page 24 of his supplemental brief, that the facts are correctly stated by the Master in his Report, on pages 47 and 48.

On page 47 of that report, the Master says: "The assessment complained of, of $175,000.00 for the year 1901, is on the credits accruing to it from the advances made by it in New Orleans, through its agents here, *on bills of lading and similar documents by way of collateral.*" (My italics).

It is conclusively established by the record that the sole purpose of the establishment of this agency in the City of New Orleans was to do an exchange business for the transaction of which complainant enjoys unusual facilities.

Incidentally, it loans money, but it loans this money solely for the purpose of making an exchange transaction.

The New Orleans agent daily telegraphs to the New York agent to sell the Comptoir's exchange in that market upon those foreign centers offering the largest profit.

The New Orleans agent does this, not for the purpose of removing the funds from the City of New Orleans, but because New York is the exchange market of this country.

When a New Orleans merchant desires to receive the value of a consignment of cotton or grain which is being shipped abroad, he applies to the Comptoir's agent in New Orleans for a loan approximating the price which he desires to receive, and gives to the Comptoir's agent in New Orleans his draft drawn upon the foreign consignee in Liverpool or elsewhere, and attaches thereto a foreign bill of lading.

These drafts are not, as counsel assert, retained in the City of New Orleans. It is evident that, in order to collect the same, they must at once be forwarded to the foreign city where they are made payable. Upon receiving these drafts and bills of lading, the Comptoir's New Orleans agent usually gives to the borrower a letter of credit upon some foreign market. This letter of credit is found at page 38 of the transcript.

The borrower then draws his draft, with letter of credit annexed, and sells his draft to a New Orleans bank.

In other cases, the Comptoir draws its draft or domestic bill of exchange on its agents in New York, and either gives that to the borrower to sell, or itself sells the same to a New Orleans bank and pays over the proceeds to the borrower.

In all of these cases it is self-evident that no money of the Comptoir is brought to New Orleans for the purpose of these loans, except such fluctuating balance as may, from time to time, result from payment of margins or the adjustment of differences between the parties. This balance has been determined by the Courts to be $20,000.00, which decision has been acquiesced in by the City and State during the last three years.

Referring to counsel's brief, at page 21, arguing that all the moneys of the Comptoir herein sought to be taxed are retained in the City of New Orleans for investment and reinvestment, the references to Mr. Breton's testimony, at pages 23 and 27, in no manner bear out this assertion. Breton simply states that a continual renewal of the exchange dealings would amount to a large sum of money.

The turning of the money over again in exchange deal-

ings did not mean, and was not intended to mean, that the funds were retained in the City of New Orleans; for it is repeatedly and constantly stated that any funds which were ever received in New Orleans were immediately reinvested in exchange, outside of this balance of $20,000.00. If the New Orleans Agency had retained these large sums of money in New Orleans for investment and reinvestment, how could the Courts have reached the conclusion that the maximum amount of such sums was $20,000.00?

Further, I beg to submit to the Court that counsel for respondent neither in their original, nor their supplemental briefs, have attempted to reply to the argument of complainant, based upon the decision of **Liverpool vs. Assessors, 51 La. An. 1028,** and cited on page 45 of complainant's original brief.

Even if it could be assumed that moneys borrowed by the Comptoir for the purpose of these exchange transactions and advances, was money belonging to it, and that it was not a debtor for a sum thus borrowed by it, it is clearly established that the obligations arising from these transactions are remitted abroad for collection, and that nothing remains in Louisiana except paid checks which are given by the borrower solely as a memorandum for the guidance of the Comptoir's book-keeper, and to certify positively the amount of the drafts no longer within reach.

These cheques are not obligations. They are never returned to the drawers. They are simply book-keeping memoranda. If it could be held that the Comptoir was not a debtor or a borrower of the money which it loans, but that from its own funds, actually within the State, it loane dthese sums of money, but received therefor no writ-

ten obligation and no tangible evidence of the debt, under this decision of the Louisiana Supreme Court, a tax could not be levied upon such loans. That Court holds that such taxation would be in violation of the Constitution of the State of Louisiana of 1879, which is identical in this respect with the Constitution of 1898.

But I submit that, on the facts as they exist, and as they are found by the Master, the business of this corporation in Louisiana is that of exchange; that it loans money as an incident to that business, and procures the money which it thus loans exclusively by the use of its foreign credit in the markets of the world.

It gives the people of Louisiana and the adjacent States the benefit, in cheaper interest, of its exchange transactions. It is a necessary adjunct to the export business of New Orleans; and for the State of Louisiana and the City of New Orleans to levy such a tax as is herein sought to be enforced, would be equivalent to its levying a tax upon the exchange *arbitrage* of the commercial world and, beyond that, would be the levying of a tax upon the export trade of the City of New Orleans.

Respectfully submitted,

HARRY H. HALL,

Solicitor of Complainant.

Supreme Court of the United States.

No. 157.—October Term, 1903.

The State Board of Assessors of The Parish of Orleans, The City of Orleans, et al., Appellants, vs. The Comptoir National d'Escompte de Paris. } Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

[November 30, 1903.]

The Comptoir Nationale d'Escompte de Paris, a corporation organized under the laws of the republic of France, filed its bill in the Circuit Court of the United States for the Eastern District of Louisiana, seeking to enjoin collection of certain taxes and to cancel the assessment thereof. These taxes were undertaken to be collected under an assessment upon office furniture, $1,000; money in possession, $20,000; "money loaned on interest, all credits, and all bills receivable for money loaned on interest or advanced for goods sold, $175,000." There is no contest as to the taxes assessed upon the furniture or money in possession, but it is sought to enjoin the collection of the tax assessed upon the $175,000, which for the year 1891 is the sum of $4.550.

Complainant avers that it has no money loaned on interest, credits or bills receivable for money loaned on interest or advanced, or for goods sold within the State of Louisiana, subject to taxation; that its credits in said State are debts due to it, of which it has no legal evidence of indebtedness within the State, and that these debts have no legal situs in Louisiana, and can only be taxed at the domicile of the Comptoir in Paris. That the taxes assessed were in violation of the constitution and jurisprudence of Louisiana, and were also in violation of the Fourteenth Amendment to the Federal Constitution, inasmuch as the action complained of denied to the complainant the equal protection of the laws and deprived it of its property without due process of law.

The respondent took issue upon these allegations, and avers that complainant has credits within the State, amenable to the taxing power, and the assessment upon the $175,000 was legal and valid.

Testimony was taken by a special examiner under an order of court, and the case partially heard, and was then referred to a master, who made separate findings of fact and conclusions of law.

From the testimony adduced and the findings of the fact of the master, it appears that the complainant has had an average of $20,000 on deposit

in money in the banks of New Orleans, upon which it has paid taxes annually. It has also paid an annual license tax upon business done. The assessment upon the $175,000 arises from moneys advanced by the local agent of the Comptoir in New Orleans upon transactions wherein customers draw checks, in the ordinary form, upon the Comptoir, and at the same time deposit collateral sufficient to secure the amount of money advanced, accompanying the check and collateral with a power of attorney, reciting, among other things, that, whenever the customer shall become indebted to the Comptoir for money lent or for any overdraft upon any check, the Comptoir is to have a lien upon the securities deposited, and upon failure to reimburse any overdraft, or to pay any indebtedness when due the Comptoir to have the right to sell the collateral and apply the proceeds upon such liabilities.

The agent of the Comptoir testified that when the money was paid it was remitted back to Paris by an exchange transaction. It also appeared that the agent had authority to make loans as above without consulting the office in Paris, and that the transactions were continuing and large, and amounting to more than a million of dollars a year.

The Comptoir also did a large business in the sale of exchange directly to customers, and relied largely for its gain upon the profits in exchange transactions between this country and Europe. The collateral deposited as security by customers is kept in New Orleans and is not remitted to the home office in Paris. The money needed for the transactions of the Comptoir arises from foreign exchange drawn from London, Paris, Berlin, &c. Speaking of the transactions from which the present controversy arises, the agent testifies:

"Q. Did you charge interest on your overdrafts?—A. Yes, sir.

"Q. Well, what evidence of indebtedness, besides the account on your books with your customers, have you that these people owe you anything at all?—A. We have a regular settlement which we make every month.

"Q. When you put 850,000, we will say, to the credit of one of your customers on your books, does he give you any receipt for your money previous to your crediting him with that on your books?—A. I do not credit him; I pay him.

"Q. You pay him—— —A. Yes, sir; I pay him the money.

"Q. What evidence have you that he owes you anything?—A. I have got a check from him; he is overdrawn on my books.

"Q. For the amount you have loaned him?—A. Yes, sir.

By Mr. ZACHARIE:

"Q. Suppose a man comes to you and says, Here, I have got certain securities, certain warehouse receipts or bills of lading, I want to borrow 850,000. You say to him, We will let you have it. Now he deposits with you these bills of lading or these warehouse receipts or these bonds, whatever you choose to accept as security for the loan. Do you give him a receipt for those?—A. No. I am going to explain the business. Well,

a client comes to me and says to me, and says I want $50,000, and I propose to give you such collateral, bills of lading for cotton or for grain or warehouse receipts or bonded warehouse receipts for cotton or for cake or cotton seed meal—any kind of those products. If I approve, ready to do the business, I say, Yes. Well, there are two ways of letting him —— that money; very often I open a credit in his favor on the Comptoir National d'Escompte de Paris in Paris or in London, then he draws against that credit—I mean to say, he sells his draft on the Comptoir to anybody he pleases, either in New Orleans or New York, if the loan is for a short period. Instead of asking him to draw I will draw it myself and hand him the money.

"Q. You sell your own exchange?—A. Then he is overdrawn on my books, and to show that he is overdrawn I tell him you draw a check on me and he gives me that check. And then I make him sign a general letter of hypothecation (which will be shown to the attorney). Outside of that we have nothing of importance—I don't see anything else.

"Q. These securities and checks remain in your office here in New Orleans?—A. Yes, sir; the checks are cash vouchers for the cashier, who has them to show that he paid the money.

"Q. Suppose that the amount drawn by him does not come up to the amount of the value of this hypothecation, this hypothecated stuff, what is done there, at the close of the transaction?—A. The general letter of hypothecation does not state any amount. It states simply it is a power of attorney.

"Q. I say what is done when the transaction is concluded? He has got all of the money that you agreed to give him and the collaterals in your hands are worth more than that. What do you do there?—A. We have a margin. You mean to say if the collateral is worth more than the money we give him?

"Q. Yes.—A. Then we have a margin; then we are protected if there is a fall in the price of the securities he gives us.

By Mr. DUPRE:

"Q. Does he take back the check he has given?—A. No, sir.

"Q. When the transaction is concluded what becomes of that check that he has drawn against your bank?—A. The check is a cash voucher; it stays among the cash vouchers of the day on which it is paid and remains perpetually in the custody of the Comptoir National d'Escompte de Paris for the cashier to show that he has paid that check.

"Q. In other words, it is not returned to the man when he pays his debt?—A. Because we keep an account current which varies each day.

"Q. The agent of the Comptoir National d'Escompte de Paris in New Orleans has full authority to act for the Comptoir National d'Escompte de Paris in this city?—A. Yes, sir.

"Q. He does not have to confer by cable or otherwise with his principals in Paris or France as to whether he will make one loan or another, a particular loan?—A. He has authority to loan certain amounts, or make certain transactions by exchange according to instructions he has from the other side.

"Q. I mean, if I went in there he would not have to cable to ask about me?—A. No, sir.

"Q. When in answer to the fifth interrogatory you say the money was obtained by drawing foreign exchage on Europe, you mean to say that the cash which you lent in the city of New Orleans was obtained by drawing this foreign exchange on Europe and getting it cashed here in the banks?—A. Getting it in New York.

"Q. And the cash was forwarded to you from New York?—A. Yes, sir.

"Q. And that was the money that you lent?—A. Yes, sir.

"Q. Do you know, or can you state approximately, the amount of loans that you made during the year 1900?—A. No, I cannot.

"Q. About?—A. Well, I made so many loans, you know, for a short period, and I can't state the total amount; it would be too far away, the exact amount.

"Q. Was it over a million dollars?—A. Taken it altogether, yes.

"Q. How much over a million?—A. I do not know.

"Q. Was it ever two millions?—A. No, sir.

"Q. As I understand you, a great many of these loans were for short periods, so that you turned the money over and over again during the year?—A. Yes, sir."

The master summarized his conclusion of fact as follows:

"To sum up the facts: It is found that the the complainant has paid its annual license tax on its exchange business, as provided by law, and has paid, or offered to pay, its annual tax on the average amount of $20,000 of money on deposit in Louisiana; and that the assessment, complained of, of $175,000 for the year 1901, is on the credits accruing to it from the advances made by it in New Orleans, through its agents here, on bills of lading and similar documents by way of collateral. These credits were either in the form of credits on Paris or London, giving the right to the Louisiana debtors to draw on the complainant in Paris or London, or they were transactions at short time by which the debtors were overdrawn on the books. In both cases, they amounted to overdrafts secured by collateral. In the previous year, which is not now in question, the complainant took non-negotiable notes to represent these credits, and these were considered in the case in the 52 Annual, which will be hereafter referred to again; but in the instant case, for the year 1901, the question is of these overdrafts."

Mr. Justice DAY delivered the opinion of the Court.

The constitution of the State of Louisiana of 1898, article 225, declares that all property shall be assessed in proportion to its value. Section 1 of the act of 1898, passed by the general assembly of the State, defines "property" to include "all personal property, all rights, credits, bonds and securities, promissory notes, open accounts and other obligations, all cash, all money loaned at interest and all movable and immovable, corporeal and incorporeal articles or things of value owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever." Section 7 of the act provides that it shall be the duty of the assessor to place upon the tax roll all property subject to taxation. "This shall apply with equal force to any person or persons representing, in this State,

business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative." This act undertakes to give to the State the right and authority to assess and collect taxes upon all bills receivable, obligations and credits within the State.

This legislation was before this court in the case of *New Orleans* v. *Stempel*, (175 U. S. 309,) in which it was sought to tax certain notes secured by mortgage on real estate in the city of New Orleans. The notes were owned in New York, but were in the hands of an agent of the owner in New Orleans, who collected the proceeds thereof and the interest as it became due and deposited the same in a bank at New Orleans. In that case, the decisions of the Supreme Court of Louisiana, construing its constitution and laws, particularly the act in question, were exhaustively reviewed by Mr. Justice Brewer, and the conclusion reached that the act, as interpreted by the Supreme Court of the State, permitted the taxing of the notes in the hands of the agent, and that such action did not impair any right secured by the Federal Constitution. Since the decisions which were in review in the Stempel case, the Supreme Court of Louisiana, in a suit brought by the present complainant against the board of assessors, has had before it a case involving the right to tax credits and moneys of the complainant under a state of facts in most respects identical with that now before the court, the difference being that when the Comptoir loaned money upon bills of lading or other collateral security, it took the non-negotiable note of its customer, which note was cancelled either by the payment of the amount due or the exhaustion of the collateral. (*Comptoir National d'Escompte de Paris* v. *Board of Assessors*, 52 La. Ann. 1319.) In the method of doing business shown in the present case, instead of giving a non-negotiable note, the customer gives to the Comptoir his check, which check is not returned but held as an evidence of the indebtedness, and is later sent to the office of the Comptoir at Paris. While called "checks," and so referred to in the record and by the parties in their dealings, the instrument delivered to the Comptoir, in form an ordinary check as though drawn for payment on presentation from moneys deposited, had no such function. The money was paid to the customer upon the security of the collateral, and the so-called check taken and held as a memorandum of the indebtedness to the Comptoir.

The exact question is whether these checks, secured by collateral held by the agent, are evidence of credits for money loaned upon interest having a local situs in New Orleans and constitutionally taxable within the meaning of the Louisiana statutes.

In this case we are not dealing with that branch of the business of the Comptoir which relates to bills of exchange sold to its customers, but the assessment is sought to be made upon those credits which arise when money is loaned and advanced or paid in the State to the customer upon collateral security and the latter's check is taken therefor. The transaction from which the alleged credits arise is briefly this: The customer applies for a loan of money and offers as security a bill of lading or other collateral and the money is paid to him. Instead of a note the Comptoir takes the check of the customer, which is regarded as an overdraft, upon which the customer can make payment from time to time and upon which he is charged interest, and upon the non-payment of the check the collateral is subject to sale.

Is this a credit, for money lent on interest, taxable under the laws of Louisiana as interpreted by the Supreme Court of that State?

The real transaction between the parties was intended to create and did create a debt held for the Comptoir by its agent in the State of Louisiana and evidenced by the check and secured by the collateral, which debt, when paid, created a fund in the hands of the agent subject to loan and reinvestment by him without consultation with the principal in such sense as to localize the credit for the purpose of taxation as effectually as it would if a non-negotiable note had been taken as was done in the case decided in the 52 Louisiana, *supra*. It is true that the agent testifies that the money when repaid was remitted by an exchange transaction to Paris, and the average balance in money in New Orleans banks was $20,000, which has been assessed without objection; but it is equally clear that the transactions of this kind were large and the funds subject to the control of the agent, who could lend them at will to customers.

Whether this change, from notes to checks, was purposely made with a view to escaping taxation, as is argued by the respondents, or is a different method of evidencing the debt for the convenience of the customer, as is argued by the complainant, it is, in our judgment, equally a credit for money lent, localized in Louisiana, within the scope of the taxing laws of that State as construed by its Supreme Court.

Was the attempted taxation in violation of the Federal Constitution?

Speaking to this subject, in *New Orleans* v. *Stempel*, *supra*, Mr. Justice Brewer said:

"When the question is whether property is exempt from taxation, and that exemption depends alone on a true construction of a statute of the State, the Federal courts should be slow to declare an exemption in advance of any decision by the courts of the State. The rule in such a case is that the Federal courts follow the construction placed upon the statute by the State courts, and in advance of such construction they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact. In other words, they should

not release any property within the State from its liability to State taxation unless it is obvious that the statutes of the State warrant such exemptions, or unless the mandates of the Federal Constitution compel it."

It may be taken as a general rule of the law of taxation of personal property that such property can only be taxed at the residence of the owner, or at such place as it has acquired a situs, which will subject it to the taxing power of the State where found. In its application to tangible property, there is little difficulty in applying this principle. The difficulty arises in determining whether a credit or chose in action has acquired a local situs in contemplation of law at a place other than the domicile of the owner in such sense as will permit the State to tax it in the place of its localization. The cases are numerous, both State and Federal, which recognize the right of the State, in view of the protection and remedial rights which its laws give to the owner of intangible property, such as notes and bills, to require from such property a contribution to the funds of the State, to be collected by taxation, for the purpose of maintaining and enforcing the laws which give force and effect to such obligations. This right has been the subject of such recent adjudication in this court that we will only notice some of the later decisions. We have already referred to *New Orleans* v. *Stempel.* The question came before the court in *Bristol* v. *Washington County,* (177 U. S. 133,) in which case it was held that the personal property of a nonresident of the State of Minnesota, in the shape of notes payable at the office of the agent in Minnesota, where the mortgages securing the notes were retained by the agents, and the notes were returned from time to time when required for renewal, collection or foreclosure, the agents collecting the money and making loans in the name of the principal, generally on their own judgment, remitting to the principal the collections when required, or investing them in new loans, was properly taxable in Minnesota. Still later the subject was under consideration in *Blackstone* v. *Miller,* (188 U. S. 189,) in which it was held that a deposit by a citizen of Illinois in a trust company in New York was within the taxing power of the latter State, even though the depositor intended to withdraw the money for further investment, and although the deposit had been subjected to taxation in Illinois as a part of an estate to which it belonged.

From these cases it may be taken as the settled law of this court that there is no inhibition in the Federal Constitution against the right of the State to tax property in the shape of credits where the same are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business.

The maxim, *Mobilia sequuntur personam,* which was applied in the court below as forbidding taxation of the checks in the hands of the agent in New Orleans, has been frequently held to be but a fiction of law, having

its origin in considerations of general convenience and public policy, and not to be applied to limit and control the right of the State to tax property within the jurisdiction, it being intended to permit the owner to deal with his personalty according to the law of his domicile, and to make testamentary disposition of it according to the law where he is rather than that of the situs of the property. It was intended for convenience, and not to be controlling where justice does not demand it.

Applying these principles to the facts in the case, we have no doubt that these checks, secured in the manner stated, and given for the purpose of evidencing an interest-bearing debt, were the evidences of credits for money loaned, localized in Louisiana, protected by its laws, and properly taxable there.

The Comptoir was a foreign corporation; its business in Louisiana was in the hands of an agent; it furnished to the customer a sum of money and took from him a collateral security; for reasons satisfactory to the parties, instead of taking the ordinary evidence of indebtedness, the customer drew a check, never intended to be paid in the ordinary way, but intended by the parties to be held as evidence of the amount of money actually loaned; this loan could be satisfied by partial payments from time to time, interest being charged upon the outstanding amounts, and if not paid at maturity the collateral was subject to sale; when paid, the money might be again loaned by the agent to other parties, or remitted to the home office, and the business was continuing in its character.

It is true the money to be paid to the customer was generally obtained by the Comptoir drawing its draft upon New York or upon its home office, and a large part of the business of the Comptoir was in selling foreign exchange, but we cannot perceive that the transaction between the parties was any the less a loan because of the source from which the money was obtained.

We find nothing in the requirements of the Federal Constitution or the statutes of the State of Louisiana, as construed by its Supreme Court, which should exempt such property from bearing its burden of taxation for the public benefit. It follows that the Circuit Court erred in holding otherwise and in granting a perpetual injunction.

Decree reversed and cause remanded with instructions to dismiss the bill.

True copy.

Test:

Clerk Supreme Court, U. S.